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# THE GOVERNMENTS OF EUROPE

*BY THE SAME AUTHOR*

THE GOVERNMENT OF THE UNITED STATES

THE GOVERNMENT OF AMERICAN CITIES

MUNICIPAL ADMINISTRATION

THE GOVERNMENT OF EUROPEAN CITIES

PERSONALITY IN POLITICS

# THE GOVERNMENTS OF EUROPE

With a Supplementary Chapter on  
the Government of Japan

BY  
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*Third Edition*

THE MACMILLAN COMPANY  
*New York*



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 WHITE PAPER CLOSURE MAGAZINE NEWSPAPER

*Printed in U. S. A. by American*

et p and l otyped P bl d j 1938  
 Eighth Printing July 1947

First and second editions copyrighted and published 1925 and 1931  
 By The Macmillan Company

## PREFACE

The interest of Americans in the governments of Europe has been considerably stimulated by the events of recent years. Some knowledge of these governments has become essential to an intelligent appraisal of our own public affairs as well as to a comprehension of the daily news from abroad. The aim of this book is to describe in a general way the organization and methods of government in the chief European countries—Great Britain, France, Germany, Italy, and Russia, with some attention to a number of lesser European countries as well. A supplementary chapter on the government of Japan has been added for reasons which are given in the opening paragraph of that chapter.

In the allocation of space to the various countries I have tried to keep in mind the fact that this book is designed primarily for American readers and that their study of foreign governments is mainly useful for the light which it may throw upon their own. The political institutions and traditions of the United States are largely a heritage from those of Great Britain. They have been greatly modified, it is true, but still bear the marks of their paternity. That is why the government of Great Britain and the British Commonwealth is explained at considerable length. The European dictatorships are momentarily occupying a large place in the public interest, but this does not mean that they deserve the same amount of intensive study by serious minds as governments long established upon foundations of free popular consent. Their institutions are as yet so poorly stabilized and so badly articulated that many of them are likely to represent no more than a passing phase in governmental evolution. This volume at any rate has been planned on the assumption that governments of the democratic type are not going to perish from the earth and that a dictatorship is not the greatest evil event toward which the whole creation moves.

More than the usual amount of space has been devoted in this book to the history of government in the various countries. This has been done because of my firm belief that it is quite impossible to acquire a clear understanding of political institutions without knowing how and why they came into being. All governments

how ever novel they profess to be are in large measure what time and circumstance have made them. They are largely the product of geography, race and traditions. Their past, present and future are all parts of a seamless web. Political history, political philosophy and political practice cannot therefore be dissociated in presenting a true picture of the governmental organism as a whole. Government is not merely a matter of human caprice. It is amazing how few political institutions have ever been spontaneously created as compared with those which have slowly evolved. Some knowledge of history is essential to perspective.

During the preparation of this third edition I have become indebted to Professor Fritz Morstein Marx and Mr. Oliver Garceau of Harvard University as well as to Mrs. Vera Micheles Dean and Mr. John C. de Wilde of the research staff of the Foreign Policy Association for many helpful comments and suggestions. Professor Harold S. Quigley of the University of Minnesota, the foremost American authority on Japanese government and politics, has been kind enough to read the manuscript of the supplementary chapter on Japan. To Mrs. Ethel H. Rogers of Pasadena I am grateful for loyal assistance in typing the manuscript, reading the proofs and preparing the index.

WILLIAM BENNETT MUNRO

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# THE GOVERNMENTS OF EUROPE

## CHAPTER I

### THE SCIENCE AND ART OF GOVERNMENT

A people may prefer a free government but if from indifference or carelessness or cowardice or want of public spirit, they are unequal to the exertions necessary for preserving it if they will not fight for it when directly attacked if they can be deluded by the artifices used to cheat them out of it if by momentary discouragement, or temporary pain or a fit of enthusiasm for an individual they can be induced to lay their liberties at the feet of even a great man, or trust him with powers which enable him to subvert their institutions—in all these cases they are unfit for liberty —J. M. Stuart Mill

The science of government is that branch of inquiry which deals with the evolution organization and activities of human rulership. It is concerned with the origin of political authority with the history of government, with government as a present-day institution with government as a functioning mechanism in short, with what government has been and does. Thus it relates itself to a phenomenon which has existed from the beginning of time which is now co-extensive with human society and is the most influential of all agencies for the promotion of human welfare. As Emerson has rightly said it is the greatest science and service of mankind. It is a science because it seeks to organize the facts of government into an intelligible and coherent structure. It is a service because it seeks to discover principles which may guide the people in the art of government.

But the science of government is inherently one of the most difficult among all fields of scientific study. Its subject matter is vast both in time and space. Its phenomena are more complex than are those of any natural science for the relationships between political facts are influenced by a far greater number of variables. Difficulties also arise from the impossibility of maintaining a complete scientific neutrality in the analysis of political problems. The emotional bias from which no

WHY IT IS THE  
SCIENCE OF  
GOVERNMENT

WHY IT IS A  
DIFFICULT  
SCIENCE

human intellect is free cannot be eradicated by a pious resolution. It remains, and colors both the methods and the conclusion. As an English philosopher once remarked the reason that students of government do not more often arrive at the truth is that they do not wish to. Frequently they are more zealous in fitting the facts to their own mental stereotypes than in rigidly following the sinuous path which leads to the ultimate realities. By way of extenuation it may perhaps be pleaded that political scientists are sufficiently contaminated by a spirit of altruism to be more anxious for helpful results than concerned about the soundness of the methods whereby the results are obtained.

Finally there is no way in which those who interest themselves in the science of government can accurately measure the character and strength of the forces with which they have to deal. The astronomer has his spectroscope and the chemist his scales; the student of political science has no such mechanical aids. He cannot reduce most of his data to metricized form. No giant eye is at his disposal for the observation of phenomena which have low visibility; nor is there any political microscope to help clarify his dissection of them. No thermometer or barometer has yet been devised to gauge with precision the temperatures and pressures of the political scene. Lacking all such aids to technical exactitude the student of government is forced to substitute his own appraisal of the facts and forces—a rather poor substitute it is, and one which carries his methodology back to where that of the natural scientist was in the time of Copernicus.

Yet the study of comparative government is in a certain sense a laboratory study—with the entire world for a laboratory. Every where across the land surface of the globe the process of experimentation with new forms and methods of government is going on in ceaseless round. The two decades since the close of the World War have seen an unprecedented amount of this political adventuring; every device of rulership that human ingenuity can suggest has had or is having its trial somewhere. The astrophysicist who scans the heavens can behold no such continuous procession of exploding stars as that which may be seen with the naked eye by those who watch the political activities of their fellowmen. The political firmament is alive with comets and meteors which are having their momentary flash in popular acclaim.

THE LACK OF  
MEASURING  
DEVICES

A LA ORA  
TORY  
SCIENCE



Phenomena innumerable are crowding one another out of the way. Every new constitution, law, ordinance, or decree is an experiment in political science; so is the election or appointment of every public official. But it is not a controlled experiment, which means that it is rarely a conclusive one. Every observer deems himself created free and equal in his unalienable right to frame his own interpretation of the outcome. Political science may therefore be called an observational rather than an experimental science.

Let me illustrate by analogy. Suppose you take a thousand boulders of varying size and drop them one after another at irregular intervals and locations into a body of running water. There would presently be set in motion a thousand circular waves, moving with all degrees of rapidity and quickly intersecting. These waves would in some cases intensify, in other cases neutralize one another. Then drop a small pebble into this activated pool and ask those who are standing on the bank to tell you its precise effect upon the ruffled surface. There will be as many differing estimates as there are observers, and probably none of them will be right. Yet every action of a government, every war or rumor of war, every slight vibration of the economic structure, every twist or turn in governmental policy sets into motion a ripple whose strength and direction cannot be accurately determined because of the intersecting, intensifying, or neutralizing waves that are already there. In the science of government it is hardly ever possible to isolate one factor at a time.

And even when this can be done, there remains the fact that what is true of one community may not be true of another. An atom of hydrogen is exactly the same thing in Moscow, Munich, or Montreal—but an atom of the electorate (a voter) is not. The same temperature and barometric pressure will cause water to vaporize in Spain or in Sweden, but it does not take the same amount of political heat to generate a revolution. In the domain of political science it is always hazardous to reason from one community's experience and apply the lesson to another. No social fact is conclusive in its implications when divorced from its environment. Seven hundred years of successful experience with trial by jury in England does not afford even *prima facie* proof that this form of judicial procedure can ever be successfully used in Japan, or even in France, only thirty miles away. Institutions operate among peoples, not merely in geographical areas.

Under such circumstances the best that the student of comparative government can do is to bring together as carefully as he can the available data concerning political systems past and present sift this material carefully compare the experience of one government with another and cautiously draw conclusions from this experience By practice he will acquire a certain amount of skill and facility in the analysis and evaluation of political institutions and forces He will learn to cut through the husks of form and reach the kernels of reality He will become skeptical of generalities and critical of formulas And he will presently discover that nearly all the activities of government are phenomena of pressure—the push and resistance of human groups—and that the existing political system in any country at any given moment is due to the momentary balancing of these groups *This means that he will gradually concern himself less with the anatomy of a government and more with its physiology less with its formal structure and more with its evolution its processes and its functional actualities More especially he will be led to the conclusion that there is a good deal to be studied outside the formal framework of government and that power does not always reside where it is supposed to be Political parties need careful inquiry from this point of view*

Now the most useful adjunct that one can acquire in this connection is a knowledge of history Sir John Seeley once remarked that history is past politics and politics present history Of course history is more than past politics but the political activities of mankind cut a wide swath in its pages Much of the data which the student of comparative government uses must come from it And virtually every present day problem of government is related to the past To understand it one must know why and how it became a problem Every government, however newfangled it may claim to be is shot through with methods and practices which are a hold over from what went before This is true of Soviet Russia the German Third Reich and Fascist Italy alike All governments are living organisms which inherit from the past and transmit to the future Revolutions no matter how revolutionary never represent a complete break in the continuity of a nation's political evolution Often they merely sweep away old institutions and then revive them under new names—as when the French Revolution uprooted the intendants and

THE ART OF  
APPRAISING  
POLITICAL  
FORCES.

TO A  
KNOWLEDGE  
OF HISTORY  
HELPS

replaced them by prefects or when the Bolsheviks abolished the Czarist secret police and substituted the Cheka

Every government accordingly is a going concern which carries something from the past into the present and something from the present into the future. No such words as stalemate, standstill, stationary or static have any place in the dictionaries of political science. In the bright lexicon of politics there is no such thing as finality. The forms and methods of rulership are in a continual process of change. Sometimes this process is slow; at other times it is speeded up. When it is sufficiently accelerated we have what is termed a revolution, reconstruction or new deal. The governments of the world are passing through such a transition now. They have done it before and probably will continue to do it at more or less unpredictable intervals in the future. The fundamental reason for political revolutions *co ps d' a* and new deals may be found in the simple fact that governments under normal conditions are slow moving affairs. They do not ordinarily bestir themselves to keep step with economic changes or with the new orientation of the people which such changes inspire.

Ideas, as a rule, travel less rapidly than events. Technology marches faster than political idealism. The human race is more proficient in devising new methods for the production of wealth than in maturing plans whereby man may be better governed. Normally it is disposed to let well enough alone. Since the day when man was condemned to eat bread in the sweat of his brow, he has devoted the bulk of his energies to getting the most bread for the least sweat. He has not been overconcerned about the amount of perspiration that this might engender upon his neighbors' bon.

So a widening gap develops between the facts of national life and what the government assumes them to be; between what the people think they want and what the government is giving them. Governments, as a matter of fact, have even less imagination and initiative than individuals, which means that they haven't much of either. That is why political institutions and methods which were devised for use in simple agricultural communities are carried over without much change into a complex and highly mechanized industrial age. Then when the discordance becomes so loud that everyone can hear it, there is a vigorous popular demand that government be brought into line with the changed economic orientation. To accomplish this,

A STUDY IN  
DYNAMICS

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OLETI  
TRANS O

necessitates the upsetting of many things in a drastic and disconcerting way. But it is merely a matter of doing in haste under the stress of an emergency what should have been done by easy stages over a considerable number of years. A revolution *coup d'état* new regime or new deal is something that governments bring upon themselves by their inertia more often than by their ineptitude or by their sins of omission more often than by any positive malfeasance. Unmindful of change they continue to think of the present in terms of the past until a rude awakening comes.

### THE CLASSIFICATION OF GOVERNMENTS

A generation ago it was the custom of books to begin with a classification of governments and go back to Aristotle for that illustrious Greek philosopher was the first to make a clean cut division of normal governments into three types: monarchy, aristocracy, and democracy. This classification was a quantitative one based upon the number of persons who did the governing: be they a single person, a few, or the many. It was not related to the measure in which the rulers gave liberties to their people, or tolerated a loyal opposition, or dealt with private property. An Aristotle of today would find the ancient classification quite inadequate for any useful purpose. Great Britain would be classed as a monarchy, so would Italy—although the governments of these two monarchies have now nothing in common except a titular chief executive who owes his throne to the principle of primogeniture. China would be rated as a democracy with her Rule of the Many for she has plenty of people trying to govern her. Russia, where the substance of power rests with a small fraction of the people—the members of the Communist party—would be listed as an aristocracy, and as for the German Third Reich under Hitler it would hardly fit into the Aristotelian classification of normal types anywhere.

The task of arranging the governments of the present-day world into any short and simple classification is an impossible one. There are all kinds of monarchies, absolute and limited, from Afghanistan to Yugoslavia. There are republics in endless differentiation: federal and unitary, presidential and parliamentary, autocratic and popular. France is a republic—unitary, parliamentary, and popular. Austria until recently was also a republic—but federal, presidential, and

BACK TO  
ARISTOTLE

NO BRIEF  
CLASSIFICA  
TION POSSI  
LE  
TODAY

autocratic There are monarchies and republics which tolerate the free play of political parties as in Denmark and Switzerland but there are also those which permit only one political party to exist as in Italy and Germany Yet the free toleration of political parties or the lack of it provides one of the most dependable clues to the true character of any government Any attempt at classification which overlooks this fundamental feature is valueless for it provides the true line of demarcation between governments that rule by true popular consent and those that do not Such a consent can never be real when dissent is prohibited

The form of a government as Edmund Burke once said reaches but a little way It is the spirit of a government that counts And the spirit of a government is not to be discovered by merely reading the constitution under which it operates To determine the true character of a government one must compile a detailed inventory of its ideals institutions methods practices and policies The distinction between democracy and dictatorship does not depend upon how large a portion of the people are allowed to go through the motions of choosing their rulers Autocracy has shown itself to be quite compatible with universal suffrage But it is not compatible with freedom of speech an uncensored press and the right of political parties to organize in opposition to the government

WHY THIS  
IS SO

Modern dictatorships do not abridge the voting privileges of the people They merely make sure that the people vote right Ostensibly they do not govern by majority but by virtually unanimous consent And this is not a difficult thing to do when the government absolutely controls all the avenues of information and propaganda when it employs every known form of official intimidation and when it permits the people to vote for no candidates other than its own The line which separates democracy from dictatorship therefore cannot be drawn by applying any formula nor can it be ascertained by comparing constitutions laws and governmental forms Much less can it be determined by accepting at face value the slogans myths and catch phrases with which all governments of whatever sort try to hypnotize both their own people and the outside world To place governments in their proper classification one must know them thoroughly in all their relations and activities When that is done it will appear that there are about as many classes as there are governments There

DEMOCRACY  
IN FORM  
DICTATORSHIP  
IN ACT

will be not only democracies and dictatorships but all varieties in between

The transition from one of these types to the other has followed a uniform procedure. When a government determines to possess itself of dictatorial powers one of its first steps is to decree the abolition of all opposing political parties. A single party closely allied to the government is given a complete monopoly. No loyal opposition is tolerated. All political opponents are branded as disloyal counter-revolutionary or public enemies. Criticism of the government is sedition, an assault upon the integrity of the state. None but members of the officially recognized party can hold public office or be nominated for election. Under such conditions the legislative body becomes exclusively composed of government supporters ready to give the head of the government a mandate to rule as he pleases or to ratify his actions as a matter of form. Then there is no longer any need to enact laws. Ordinances and decrees take their place. Instead of an executive responsible to the legislature there develops a legislature which is subservient to the executive and owes its very existence to his will.

All this, of course, is a complete reversal of the political idealism which marked the nineteenth century. During the era which intervened between the French Revolution and the World War political liberalism fought its way forward inch by inch in the various countries of Western Europe. Popular revolutions overthrew autocracies. Constitutions were wrung from reluctant monarchs, the suffrage was gradually extended, political parties developed, and freedom of political opinion became established. The end of the World War seemed to mark a great and final triumph for political liberalism. The new constitutions which were framed during the aftermath of this great struggle proclaimed themselves democratic from preamble to conclusion. A century hence, if anyone writes a history of the rise and fall of democracy, he will designate the year 1920 as its high water mark.

But the tide receded soon and rapidly. The ideals for which men of only a single generation ago were ready to fight and die seem now to have lost their hold upon great masses of mankind. The world's confidence in these ideals has been rudely shaken. Democracy, as the nineteenth century understood the term, is everywhere in total or partial eclipse. The

THE EAR  
MARKS OF A  
DICTATOR  
SHIP

THE ZENITH  
OF PARLA-  
MENTARY  
GOVERNMENT

AND ITS  
SEQUENT  
ECLIPSE

reasons for such a remarkable change in political orientation are worth seeking but they are not easy to explain being neither few nor simple. To understand them requires some knowledge of how the older governments functioned before the war and of how some of the new one failed to function after the war was over. Forms of government obey the law of the pendulum. They swing from one extreme towards the other when pressure comes as it always does in great national emergencies.

Democracy which had come to mean parliamentary government based upon the rivalry of political parties is not in the last analysis an efficient form of government. It is not an ideal agency for solving national problems either economic or political in a prompt and decisive way. For it proceeds by deliberation and compromise it divides authority and enforces responsibility it is government by law and not by executive decree. But there are times when prompt and forthright action in the domain of public policy becomes imperative. When politics becomes economic the politician flounders. Then comes the autocrat's turn. People want things done and done right away without caring much who does them or how. Such an occasion arose in the United States during the early days of March 1933 but the American scheme of government proved flexible enough to meet the situation. Some European countries were not so fortunate. Political parties fought and prime ministers fiddled while millions were thrown out of work and went hungry. But people will not starve in order to preserve ministerial responsibility state rights or freedom of speech. In their misery they will turn to some Moses true or false who promises to lead them out of the wilderness. Then when they have reached the promised land of work and security they find that they have pawned their liberties as the price of transportation. The road to economic security by way of political dictatorship is the most costly thoroughfare that the folly of man has ever devised.

Democracy is a scheme of government based upon the assumption that man is a rational being. Sometimes he is but in the main he is swayed by his emotions and actuated by his prejudices. It may be true as Lincoln said that you can't fool all the people all the time but under a regime of universal suffrage you can sometimes fool enough of them to induce a surrender of their civil liberties. Or if they cannot be misled they

THE SHORT  
COMINGS OF  
DEMOCRATIC  
RULERSHIP

A PREDICTION  
FULFILLED

can be intimidated deluged with propaganda and enslaved to a few patriotic formulas When they ask for a new deal what they sometimes get is a new deck—not a change in the methods of government but in the structure of government Even the most valiant among American protagonists of democracy Thomas Jefferson did not believe that it would permanently endure as a scheme of rulership Better perhaps than any other statesman of his time he saw its limitations Hence his prediction that when countries became industrialized with large propertyless elements concentrated in the cities the strain might prove heavier than the democratic plan of government could bear In this the Great Virginian was right as the history of nations is demonstrating a century after his death

The eclipse of parliamentary government throughout the greater portion of Europe is perhaps the most amazing thing that has happened in any part of the world during the past two decades It is a throw back to mediaevalism on an unprecedented scale To Americans in these days of closer contact with the rest of the world this struggle of free government for the right to exist is not a matter of negligible importance It may be that the United States could maintain its traditional form of government in a world that has surrendered to executive autocracy but the certainty is not absolute enough to be comfortable A comparative study of European governments at any rate will indicate the means whereby civil liberty is being preserved in some countries and the steps by which it has been lost in others By so doing it may help illuminate the American political scene

The political world of today is a baffling world full of rather fascinating confusion a proving ground for all sorts of conflicting political philosophies It is passing through a period of transition and such periods are always terrifying by *cause of the uncertainties with* which they are clouded Yet all great eras in history have been interludes of transition with an old order going out and a new one coming in They have been great eras because they brought forth critical problems to be solved by adventuring minds They have called for straight thinking in a welter of irrationality and crude emotionalism They have also demanded moral courage and intellectual honesty for new eras do not abolish the old virtues And never have these ancient virtues been more needed than in an age when one country after another is

AMERICA'S  
INTEREST IN  
ITS PRES-  
ENT  
EVOLUTION

MODERN  
DURANT



being thrown off balance never has there been greater need for rationality as a counterpoise to the rainbow-chasing which is now going on over so much of the world's surface. Governments should equip themselves with the gyroscope of common sense. Individuals and nations must alike realize that there are certain eternal truths which cannot be repealed or amended by human statutes or decrees. And one of them is embodied in the aphorism of Seneca written many centuries ago *Violenta nemo imperia continet diu moderata durant* — No one has ever been able to rule by force very long it is moderate governments that endure.

## CHAPTER II

### THE NATURE OF THE BRITISH CONSTITUTION

En Angleterre la constitution est n'existe point!—*Alexis de Tocqueville*

England is a land of contradictions. A famous French historian has assured us that no constitution operates there, while Englishmen reply that they live under the oldest constitution in the world. Both are right. It is merely a question of what you mean by a constitution. There is no British constitution in the American sense, that is a formal document embodying the nation's fundamental law. But the British people have a constitution according to their own definition of the term, and the story of its development forms one of the most important pages in the history of free government.

As a matter of fact the art of self government has been the greatest contribution of the Anglo-Saxon race to the progress of mankind.

Civilized man has drawn his religious inspiration from the East, his alphabet from Egypt, his algebra from the Moors, his sculpture from Greece and his laws from Rome. But his political organization he owes mostly to English models. The British constitution is the mother of constitutions, the British parliament is the mother of parliaments. No matter by what name the legislative bodies of other countries may be known they have a common parentage. Hence it is difficult for anyone to have a true understanding of any other free government unless he first gains some knowledge of its English antecedents. This democratization of a large part of the civilized world during the eighteenth and nineteenth centuries largely through the influence of English speaking leadership is one of the most conspicuous facts in the whole realm of political science.

In the history of mankind only two peoples have made notable and permanent contributions to the art of governing great populations. The Romans did it in the ancient world, the English speaking peoples have done it in modern times. Ancient Rome elaborated a scheme of government and a system of law which for cen-

tures exercised a profound influence in all regions of the then known world. But Rome's political evolution carried her from a popular government to an absolute one from a free republic to an imperial absolutism. The development of political institutions in England went in precisely the opposite direction. England began as an absolutism and evolved into a democracy. Her political institutions by reason of their harmony with the needs of modern civilization have been far more closely and more widely copied than were those of Rome.

POLITICAL  
EVOLUTION OF  
ENGLAND  
AND ROME

Nor is it merely because of this world wide influence that the constitution of Great Britain ought to be studied—and studied before that of any other country. It is the oldest among existing constitutions. With the exception of the half dozen years in which Oliver Cromwell quitted his farming and served as President of the English Republic under the title Protector of the Commonwealth its general framework has undergone no radical change for at least five centuries. Nowhere else has the world witnessed a political evolution so prolonged and so relatively free from great civil commotion. Not in a thousand years has England had a revolution comparable with the French Revolution of 1789 or the Russian Revolution of 1917. Not since Oliver Cromwell's time has she had a Hitler or a Mussolini. It is true that there have been civil wars and so called revolutions in England but they did not deflect the main current of political development. So while it is possible to mark out epochs or stages in the development of the British constitution this is done by noting differences after long periods rather than by coming upon sudden transformations at definite times.

POLITICAL  
EVOLUTION  
EXEMPLIFIED

Three reasons account for the remarkable smoothness with which the course of British constitutional development has been run. The first is to be found in the geographical isolation of Britain from the mainland of Europe. Nothing but a narrow strip of channel separates England from the Continent but these scanty miles of water have afforded a measure of defense which no other country of Western Europe has enjoyed. During many centuries this protection ob-

WHY ENGLAND  
DEVELOPED  
FREE INSTITU-  
TIONS

The only other European country which has had a relatively uninterrupted political development akin to that of England is Switzerland. Hence the principal explanation is to be found in the natural facilities for defense against arm-  
ed invasion.

viated the need for a large standing army and thus withheld from the British monarchs the one weapon with which they might have crushed popular liberties as did the Bourbons in France and the Hapsburgs in Spain. The English kings claimed a right to maintain a standing army but they never succeeded in making good this claim, and the Bill of Rights (1689) eventually disposed of it by an express declaration that the maintenance of a standing army in time of peace without the consent of parliament is contrary to law. England's insular position is by far the most important clue to a proper understanding of her constitutional history. Shakespeare was not unmindful of this fact when he wrote of his native island as

✓ This precious stone set in a silver sea  
Which serves it in the office of a wall,  
Or as a moat defensive to a house  
Against the envy of less happier lands

In the second place the undisturbed political evolution of England has been due to the genius of her people. The fusion of racial strains—Celt, Saxon, Dane and Norman—gave to the British islands a breed of men in whom the ardor for free political institutions was enduring and strong.

THE GENIUS  
OF THE RACE

So strong did it prove to be in fact that it ultimately became the root of Britain's difficulties with her own colonies. The people of the British isles and their descendants wherever scattered have in all ages been hostile to improvised uncertain or dictatorial government on the other hand they have displayed a loyal respect for political authority that is based upon their own consent.

And something finally must be attributed to the happy accident that no rigid constitutional framework was devised in the earlier stages of British history to hold the course of political development in bondage. Englishmen have never had much use for political abstractions. They do not look for logic or system in their government. They are not worried by political inconsistencies, anachronisms or even what seem to be absurdities. They are more concerned with the practice than with the principles of political organization. Accordingly the British constitution has never been constrained into stereotyped form. It has remained flexible, uncodified, and to a degree indefinite.

3 HER CON-  
STITUTIONAL  
FLEXIBILITY

[The constitution of a state or nation consists of those fundamental

provisions which determine its form and methods of government. It is the accepted basis of political action. Thomas Paine one of the philosophers of the American Revolution argued that where a constitution cannot be produced in visible form there is none but few would agree with that proposition nowadays. If certain rules provisions and customs are accepted by the people as the basis of government then they have a constitution. It matters little whether the basic rules are embodied in a single document or in several documents or in none at all. Constitution is derived from the Latin *constituere* which means to establish. A constitution is something established as the basis of government—whether by a constitutional convention or by process of evolution is immaterial. Most constitutions have been established by the former method the British constitution is the outstanding example of the latter.

WHAT IS A  
CONSTITU-  
TION

Hence the American student who walked into a great London library some years ago and amused the attendants by asking for a copy of the British constitution was doing a perfectly logical thing from the American point of view. He knew that in his own country there was such a constitution as a schoolboy he had seen it printed in textbooks. Perhaps he had undergone the scholastic oppression of being required to memorize its preamble. In public discussions he had heard the provisions of that document quoted as the last word the supreme law of the land. To his way of thinking it was inevitable that a constitution should be a document concise in form orderly in arrangement and definite in its terms.

THE AMERICAN  
CONSTITUTION

Yet it would be far from accurate to say that the government of the American Republic rests on a single document. The real Constitution of the United States includes not only the document which was framed at Philadelphia in 1787 but all that has been read into it by the courts and all that has been read out of it by Congress during the past hundred and fifty years. When James Bryce in his famous *American Commonwealth* asserted that the Constitution of the United States is so concise and so general in its terms that it can be read in twenty minutes he did not mean to imply that anyone could obtain even an elementary grasp of American government in that length of time. By merely reading the four thousand words of the federal constitution one would learn nothing about legislative procedure state

IT DOES NOT  
QUARE WITH  
THE FACTS

government local government party organization and a dozen other matters which are of the greatest importance in the American political system To read the American constitution in its wider sense would take not twenty minutes but twenty months)

In the terminology of political science the word *constitution* was first employed by Englishmen to designate certain fundamental customs or ancient usages declared in solemn form by the king with the assent of his Great Council

Thus Henry II in 1164 issued a set of rules governing the relations between the secular and ecclesiastical courts and these became known as the Constitutions of Clarendon Ostensibly they were not new rules but merely the old usages put into written form and formally declared So it was with the provisions which the barons wrung from King John in 1215 On a much broader scale Magna Carta enumerated the various fundamental customs of the realm It was a document of definition not of legislation and might just as well have been called the Constitution of Runnymede This surrender of the king marked the beginning of constitutional government in Europe that is of government based upon a definite understanding between a monarch and his people

But these constitutions and charters did not embody all the principles upon which the government of England rested during the succeeding centuries From time to time they were supplemented by successive confirmations of the Great Charter by the Provisions of Oxford (1259) and by a series of great statutes Later came the Instrument of Government issued by Cromwell in 1653 This Instrument of Government was a formal written constitution in all its essential for it set forth in some detail the powers of the executive and the legislature It established a British republic with legislative power vested in a single chamber and a president (Lord Protector) with a life tenure But parliament never accepted this constitution and not long after Cromwell's death it merely decreed that the government of England should again be conducted according to the ancient and fundamental laws of the kingdom Thus ended the first and only experience of England as a republic under a formal written constitution

But this short lived Cromwellian experiment was merely a prelude to a new experience with formal constitutions on the other side of the Atlantic The American colonies caught the idea involved in

the Instrument of Government and utilized it. During the latter part of the seventeenth century they revived the practice of using the term constitution to designate their own fundamental laws or colonial charters. And after the Declaration of Independence all the thirteen states used the word constitution to designate the new instruments of government which they set up. In other words America borrowed the term from England gave it a more precise meaning, and during the past hundred and fifty years has been largely responsible for the extension of this idea throughout the world.

SPREAD OF  
THE IDEA.

Great Britain has never had a constitutional convention like the one that met at Philadelphia in 1787. The British constitution is the product of continuous and almost imperceptible accretion. That is why a distinguished French publicist once compared it to a river whose moving surface glides slowly past one's feet, curving in and out, and sometimes almost lost to view in the foliage. In other words it is the result of a process in which charters, statutes, decisions, precedents, usages and tradition have piled themselves one upon the other from age to age. Or to use another metaphor it is a rambling structure to which successive owners have added wings and gables, porches and pillars thus modifying it to suit their immediate wants or the fashion of the time. Its architecture bears the imprint of many hands. It is neither Gothic nor Romanesque nor Florentine, neither Saxon, Celtic, Danish nor Norman. Rather it is a mediæval edifice which has been renovated and modernized until only the outer shell remains unaltered.

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LIS DIA.

To drop the architectural similitude let it merely be pointed out that the provisions of the British constitution have never been systematized, codified or put into an orderly form, and probably never will be. The task would be virtually impossible for no one could do the law, the constitution and tradition cover a wide range but many of them are not sufficiently definite to be set down in writing. Moreover they are continually in process of change, new customs replacing older ones. Precedents are being made almost daily and these gradually solidify into customs of the constitution. Some of these customs of the constitution are now so firmly entrenched that everyone accepts them, others are by no means universally recognized while others again are subjected to varying interpretations. It is a fixed and unquestioned usage of the

A DYNAMIC  
AFFAIR.

British constitution for example that a ministry may resign or procure a new election when it loses the support of a majority in the House of Commons but it is not a universally accepted usage that it must do this on any adverse vote. The writer who set out to explain just what constitutes want of confidence in a ministry would have a hard time doing it. The English, says a French critic, have simply left the different parts of their constitution wherever the waves of history happen to have deposited them.

The difference in this respect between the British and American constitutions however has been clouded by our habit of using the same word in two dissimilar senses. If we use the term

#### ERRORS

WE HAVE  
ARISEN FROM  
DIFFERENCES  
IN DEFINITION

constitution to include the entire body of written and unwritten rules by which the fundamentals of government are determined then both Great Britain and the

United States are alike in possessing something that conforms to this description. In both countries this aggregation of fundamental rules whether written or unwritten is constantly developing broadening changing. The Constitution of the United States includes not only the original document of eighty-one sentences which were so laboriously put together at Philadelphia in 1787 but the vast mass of statutes judicial decisions precedents and usages which have grown up around it. It is a live growing organism which never stands still for a single day and it never can stand still so long as Congress sits and the Supreme Court hands down decisions.<sup>1</sup>

The founders of the American Republic, as has been said, did not encase a living heart in a marble urn. The American who spends half an hour in reading his national constitution may get a better idea of the fundamental rules which govern his country than does the Englishman who spends the same amount of time in studying Magna Carta the Bill of Rights the Parliament Act, or the Irish Treaty but neither American nor Englishman can in this way gain any comprehensive idea of the political institutions under which he lives.

Hence the student who desires to follow Machiavelli's advice and concern himself with the truth of things rather than with an imaginary view of them will go beyond the formal documents in either case. He will bear in mind that the real constitution in any country is like the photograph of an individual no matter how good a like

<sup>1</sup> See the author's volume on *The Makers of the Unwritten Constitution* (New York, 1909) pp. 1-26.



ness it may be today it will not be so good a likeness ten years or even five years later. The general features of the individual as of a government may remain unaltered but the picture is no longer true to life.

Too much stress has been placed upon the distinction between written and unwritten constitutions. The outstanding feature of British government we are often told is that it rests on an unwritten constitution. This statement is more apt to mislead than to enlighten. A substantial portion of the fundamental law by which Great Britain is governed has been put into writing. The relations between England and Scotland for example and between England and Ireland the succession to the crown the qualifications for voting the organization and procedure of the courts—all these and many other fundamentals of British government are on record in black and white.

What then is the constitution of Great Britain? It consists one may say of five elements not all of which lend themselves to precise definition. First there are certain charters petitions statutes and other great constitutional landmarks such as Magna Carta (1215) the Petition of Right (1628) the Bill of Rights (1689) the Act of Settlement (1701) the Act of Union with Scotland (1707) the Great Reform Act (1832) the Parliament Act (1911) the Irish Treaty (1921) the Statute of Westminster (1931) and the Government of India Act (1935). But all of these cover a very small portion of the fabric of British constitutional law. Most of them merely dealt with the grievances or necessities of the hour. They do not make a comprehensive code. Moreover they are all within the power of parliament to change at any time.

THE LE  
MENTS IN  
THE BRITISH  
CONSTITU  
TION

1 GREAT  
CHARTERS  
AND OTHER  
LANDMARKS

Second there is the great array of ordinary statutes which parliament has passed from time to time relating to such things as the suffrage the methods of election the powers and duties of public officials the rights of the individual and the routine methods of government. The various reform acts from 1867 to 1918 are examples. The use of the secret ballot to take an illustration is regarded by Englishmen as a constitutional right but it rests on a statute. There is in fact no legal difference between a great constitutional landmark such as the Parliament Act of 1911 and any ordinary statute.

2 STATUTES

Third there are judicial decisions interpreting all the charters and statutes explaining the scope and limitations of their various provisions. They correspond to the long line of decisions made by the courts on constitutional questions in the United States—except that the line is longer and the cases not so numerous.<sup>1</sup>

Fourth it is often said that the common law is a part of the British constitution. By the common law is meant that body of legal rules which grew up in England apart altogether from any action of parliament and eventually gained recognition throughout the realm. Such securities for personal liberty as the British constitution affords to those who live under it were for the most part brought into being by the common law—for example the right to a jury trial in criminal case and these may fairly be said to form part of the British constitution in its broader sense. The common law like statutory law is continually in process of development by judicial decision.

Finally there are various political customs or usages which are scrupulously observed and hence exert a subtle influence on various branches of the government. Usage plays a larger part in the workings of the British constitution than in the constitution of any other country because it is older and the usages have had more time to grow. A large part of the British governmental system in fact rests on custom rather than upon laws or judicial decisions—for example such vital features as the cabinet and its responsibility to the House of Commons.

A failure to appreciate the importance of usage and judicial interpretation as agencies of constitutional amendment has led to invidious comparisons between that living ever-changing organism the British constitution and the embodiment of our own ideals faded hopes old fears primitive economic and social facts the Constitution of the United States.<sup>2</sup> Such statements as has been shown betray a complete failure to sense the realities. The Constitution of the United States is just as living and ever-changing as that of Great Britain or more so. One might almost

Most of the important decisions can be found in D. L. K. 11 and F. H. Law son *Case Constitutional Law* (2nd edition revised Oxford 1933)  
Herman Fisher *For on Governments at Work* (Oxford 1924) p. 57

say that it ~~undergoes~~ some change every Monday morning when the Suprem. Court hands down its decisions. No vigorous nation would ever tolerate a lifeless constitution. If the methods of formal amendment proved too cumbersome it would find some other agency change. The United States with the help of the Supreme Court found it a century ago.

So what is the constitution of Great Britain? It is a complex amalgam of institutions principles and practices it is a composite of charters and statutes of judicial decisions of A FINAL DEFINITION common law of precedents usages and traditions. It is not one document, but thousands of them. It is not derived from one source but from several. It is not a completed thing but a process of growth. It is a child of wisdom and of chance whose course has been sometimes guided by accident and sometimes by high design.

Over every provision of this constitution however parliament is legally supreme. This sounds strange to American ears. In theory at any rate parliament can alter any feature of British government at will. No charter or statute HOW THE BRITISH CONSTITUTION IS AMENDED however fundamental is placed beyond the power of parliament to change. there is no judicial decision that it cannot set aside no usage that it cannot terminate and no rule of the common law that it cannot overturn. All governmental powers rest ultimately in the hands of parliament. The jurisdiction of parliament to use the words of Sir Edward Coke is so transcendent and absolute that it cannot be confined either for causes or persons within any bounds. It is desirable that every student of the British political system should firmly grasp this legal principle at the outset. The British parliament is as nearly sovereign as any mundane body can be. The only thing it cannot do is to bind its successors. it cannot interrupt or put an end to the process of constitutional change.

In Great Britain accordingly there is no legal difference between *constituent* authority and *lawmaking* authority such as exists in the United States. In the national government of the United States the lawmaking power rests with Congress but constituent power that is the power to amend the constitution does not come within the scope of congressional authority. To amend the Constitution of the United States is far more difficult than to amend

CONSTITUENT  
AND LAW  
MAKING  
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a statute as is shown by the fact that although Congress passes several hundred laws at every session only nine constitutional amendments have been ratified during the past one hundred years Parliament is supreme in both spheres it is both the lawmaking and the constituent authority Even the succession to the throne as established by the Act of Settlement, can be changed by a simple statute if parliament desires to change it

There is a marked difference, therefore, between the concept of unconstitutionality in the two countries. When we say in the United

CAN AN ACT  
OF PARLIA-  
MENT BE UN-  
CONSTITU-  
TIONAL?

States that a law passed by Congress is unconstitutional we mean that it is contrary to some provision of the national constitution and hence will be declared invalid by the courts. In that sense no act of parliament can be unconstitutional. When an

Englishman brands an act of parliament as unconstitutional he merely expresses his own opinion that it is a departure from the existing traditions of British government that it is unjust un British or an objectionable innovation. If parliament, for example were to pass a law permitting civilians to be tried by court martial in time of peace the whole of Great Britain would undoubtedly rise up and protest that such action was unconstitutional. But no Englishman would think of calling upon the courts to nullify such a law or imagine for a moment that any court save the high court of parliament itself could set the law aside. They would demand that the obnoxious law be repealed or failing this that a general election be held to let the people choose a new parliament.

This unrestrained legal supremacy of parliament this power to amend the constitution by the process of ordinary lawmaking is said to give the British political system a degree of flexibility which is not found in countries where the constituent and the lawmaking power are lodged in different hands. English writers have been in the

THE AS-  
SERTED FLEXI-  
BILITY OF THE  
BRITISH CON-  
STITUTION

habit of dilating upon this asserted virtue of their constitution which, they claim permits it to be adapted more readily to new conditions than is possible in any other country. Many years ago Walter Bagehot in his brilliant sketch of English government, dwelt at length on this theme.<sup>1</sup> Parliament he said could abolish trial by jury pass bills of attainder confiscate private property without compensation take the suffrage away

*The English Constitution* Many editions have been published.

from all but taxpayers and even turn England into a republic

In a narrow legalistic sense all this is doubtless true But there is little profit in discussing an exercise of power based upon the assumption that parliament has transformed itself into a madhouse Legislators in all lands have a decent respect for the opinions of mankind What they could do if they dared is of far less consequence than what they dare to do Legislators come from the people they think and feel as the people do they are saturated with the same hopes and fears they are creatures of the same habits and when habits solidify into traditions or usages they are stronger than laws stronger than the provisions of written constitutions The written Constitution of the United States forbids the taking of private property without just compensation but that is not the reason why private property remains unconfiscated in America Private property is just as inviolable in Great Britain although it is protected by no constitutional guarantees The real reason for its immunity from confiscation in both countries is the same namely the existence of a nation wide belief that to take a man's property for public use without compensation is unjust, arbitrary and an abuse of governmental power

IS IT AN ACTUALITY?

The frequency with which the constitutional methods and practices of a nation are changed does not depend wholly or even largely upon the simplicity of the amending process In France the process of amendment is almost as easy as in Great Britain Yet France during the past twenty years has had fewer constitutional amendments than the United States where the process of amending the constitution is very much more complicated

FLEXIBILITY DOES NOT DEPEND ON EASE OF AMENDMENT

The flexibility of a constitution depends on two things first the nature of its provisions and second the attitude of the people toward constitutional amendments If the provisions of a constitution are broad enough to permit considerable changes in governmental practice without any formal amendment, then the constitution possesses flexibility as an inherent virtue This is true of the constitutions of Great Britain and the United States alike If on the other hand the constitution is cluttered up with rigid details as are the constitutions of various American states there is no way of adjusting the document to new governmental needs except by amending its provisions

RATHER IT DEPENDS ON

1 THE BREADTH OF THE ORIGINAL PROVISIONS

This does not mean however that such constitutions are necessarily more rigid than those of the other type. Whether they are or not depends upon the attitude of those who possess the power to make the changes. On the face of things the constitution of California is far harder to change than that of Great Britain but it is in fact more easy to change and it is changed more frequently. A conservative people, with a constitution couched in broad terms will make relatively few changes in it over considerable periods of time. But if they form a volatile community with a constitution that is detailed in its provisions there will be an annual procession of amendments no matter how hard the process of amending may be—yes even though it necessitates bringing the whole people to the polls in order to get an amendment adopted.

Let it be repeated the unique feature of the British constitution is not its unwritten character for a considerable part of it is in writing.

Nor is it distinguished from other constitutions by the fact that it can be amended through the ordinary channels of lawmaking for the same is true of some other European constitutions. Nor yet does it possess in actual practice a greater degree of flexibility than some written constitutions in the United States. The unique feature of the British constitution is to be found in its curious divergence from the actualities of government. In all other countries the constitutional provisions are measurably in tune with the facts. In Great Britain they are not. In the British constitution nothing is what it seems to be or seems to be what it is. There is a gap between constitutional theory and governmental practice such as exists in no other land.

In Great Britain the institutions forms principles theories ceremonies and phrases of government often remain in existence unchanged although their practical importance has long since departed. Functions are performed by one official or body of officials in the name of another. Powers which for centuries have not been exercised and doubtless never will be continue to be vested in established authorities. By the constitution things are assumed to be done in one way the officials do them in another way. That is why English writers in describing their government devote half their chapters to picturing

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THEORY AND  
PRACTICE

THE RESULTS  
OF THIS GAP

what it is supposed to be and the other half to explaining that it is in reality something quite different

The salient features of the British constitution may accordingly be set forth as follows first there is no legal distinction between a constitutional provision and an ordinary statute Parliament is supreme over both Second no British law can be unconstitutional in the American sense There is no supreme court of Great Britain with power to declare an act of parliament null and void Third the British constitution does not recognize the principle of division of powers the doctrine that legislative executive and judicial authority should be vested in separate and independent hands Nor is there any division of powers between national and state governments as in the United States Parliament makes the laws controls the executive and is itself the tribunal of last resort on constitutional questions Parliament may legislate on any subject its field of legislative jurisdiction is confined by no constitutional enumeration of powers as is that of Congress Finally there is a considerable discrepancy between the rules of the British constitution and the actual processes of government

This last statement needs a word of explanation England began her political history as an absolute or nearly absolute monarchy But England has become in the course of the past seven centuries a limited monarchy a crowned republic Nevertheless the theory of absolute monarchy has never been shaken out of the constitution and the crown is still the source of all authority In legal form all actions of the government are actions of the crown exercised in the name of the crown All officers of government are the servants of the crown The ministers of state are the advisers of the crown summoned and dismissed at the royal discretion No statute is valid without the crown's assent no appointment is ever made (not even that of the prime minister himself) save in the name of the crown No parliamentary election can be held save in obedience to the king's writ It is His Majesty's navy His Majesty's post office His Majesty's courts His Majesty's government, and even His Majesty's loyal opposition in parliament

This is because the ancient prerogatives of the crown in assenting to laws in making appointments and in dispensing justice have never been taken away by any change in the constitution or the

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laws But every Englishman knows that these high sounding royal prerogatives have been so curtailed and circumscribed by usage and tradition that today they have little or no actual significance at all All political power has been shifted from the king to the people acting through their chosen representatives in parliament The phraseology of royal absolutism remains in the laws even though the last vestiges of it have gone from the practice of British government

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The essential and peculiar characteristic of the British monarchy therefore is that the king retains the symbolism of absolute power although he has completely lost the substance of it. As a consequence of this both laws and usage theory and fact principle and practice are widely at variance<sup>1</sup> throughout the whole structure of British constitutionalism This makes the government a hard one to describe One is tempted to set forth the law explaining that it is not the practice Then on second thought it seems easier to set forth the practice explaining that it is not the law No wonder the impatient Tocqueville shrugged his shoulders and said In England the constitution there is no such thing!

**GENERAL WORKS** The general subject dealt with in this chapter has been discussed by many writers on English constitutional history and government. The best short surveys may be found in F. A. Ogg *English Government and Politics* (2nd edition, New York 1936) pp 57-81 A. L. Lowell *Government of England* (2 vols New York, 1908) Vol I pp 1-15 Sir William R. Anson *Law and Custom of the Constitution* (5th edition Oxford 1922) Vol I pp 1-13 R. K. Gooch *Government of England* (New York, 1937) pp 53-92 W. I. Jennings *The Law and the Constitution* (London 1933) and A. B. Keith *An Introduction to British Constitutional Law* (London 1931) Attention may also be called to the chapter on 'The Salient Features of the English Constitution' in Sir John A. R. Marriott, *English Political Institutions* (new edition Oxford 1925) and to the same author's *Mechanisms of the Modern State* (2 vols Oxford 1927) Vol I pp 149-170 also to the introductory chapter in Sir Sidney Low *The Government of England* (new edition New York 1917) pp 1-14

**SPECIAL DISCUSSION** A much more extensive discussion is given in A. V. Dicey *Law of the Constitution* (8th edition London 1915) especially chaps 1-11 xiv-xv and in note v of the appendix Jesse Macy *The Nature of the English Constitution* (New York, 1911) is a historical consideration of the



subject a very stimulating and readable one. A. B. Keith *Governments of the British Empire* (New York, 1935) explains the relation of the British constitution to the empire as a whole. On the nature of constitutions in general there is a good chapter in W. F. Willoughby *The Government of Modern States* (new edition, New York, 1936) pp. 117-127 and reference should also be made to Carl J. Friedrich *Constitution and Government* (New York, 1931) pp. 101-143.

**DOCUMENTS AND SELECTED CASES.** The great constitutional landmarks such as Magna Carta and the Petition of Right are printed in G. B. Adams and H. M. Stephen *Selected Documents of English Constitutional History* (New York, 1920) which may be supplemented by E. M. Violette *English Constitutional Documents since 1832* (New York, 1930). Convenient collections of cases are included in D. L. Heir and F. H. Lawson *Cases Constitutional Law* (2nd edition revised, Oxford, 1933) and in B. A. Bicknell *Cases on the Law of the Constitution* (London, 1926).

All the books mentioned at the close of the next chapter also shed light directly or indirectly upon the nature of the English constitution.

## CHAPTER III

### HOW THE CONSTITUTION DEVELOPED

The English parliament strikes its roots so deep into the past that scarcely a single feature of its proceedings can be made intelligible without reference to history — *St. Courtney y. Ilbert*

It has been a leading characteristic of English constitutional history said Woodrow Wilson that her political institutions have been incessantly in process of development, a singular continuity marking the whole of the transition from her most ancient to her present forms of government <sup>1</sup> The development of the English constitution is not a history of drastic shifts. All the way through it is a history of quiet change, slow modification, and unforced — one might almost say of unconscious — development. Great changes in its spirit have occurred from century to century, but they have been brought about so gradually that the process of alteration has hardly been perceptible. One cannot assign definite dates for the various stages as in the United States. It must suffice to say that the transition took place during a certain century, or sometimes in the course of a designated reign. Hence the reader of this chapter will not be asked to remember a lot of historical dates, for in no other country are exact dates so little worth remembering.

The island of Great Britain, which includes England, Wales, and Scotland, has an area of about eighty-eight thousand square miles.

It is comparable in size with Minnesota. Its present population is about 45,000,000. A little to the westward lies Ireland, with an area of about thirty thousand square miles (considerably less than that of Cuba) and a population of only four and a half millions. When Great Britain first appeared on the horizon of recorded history it was inhabited by Celtic tribes, dark-haired invaders from the mainland of Europe who had crossed the Channel several centuries before the dawn of the Christian era. Julius Caesar crossed from Gaul to Britain with an army in 54 B.C. but did not attempt a permanent occupation of the country.

<sup>1</sup> *The Stat.* (New York, 1918) p. 183



It was not until nearly a century later that the Emperor Claudius undertook the actual conquest of Britain and succeeded in establishing a Roman province there

The Romans occupied the main island as far northward as the present Scottish border and westward to the mountains of Wales

THE ROMAN CONQUEST AND WITHDRAWAL They did not conquer Ireland Their occupation of England continued for nearly four hundred years during which time they built great highways established towns and developed a considerable trade But they

did not colonize the country with Roman settlers and when they withdrew in the early part of the fifth century their political institutions soon disappeared They made no more impression upon the language religion and temperament of the people than the British have done during their three hundred years of activity in India These four centuries of Roman tutelage sapped the war spirit of the country however and when the Romans departed the people found themselves without means of defense against their enemies

It was not long before marauding tribes from across the North Sea—Danes the Angles and Saxons—descended upon the British coast and effected a landing They arrived in large

THE COMING OF THE ANGLO-SAXONS numbers drove the people westward and occupied the greater part of England Settling on the evacuated lands these various Anglo-Saxon tribes eventually

established seven districts or kingdoms—East Anglia Mercia Northumbria Kent Sussex Essex and Wessex, each with its own chief or leader Then followed a period of intertribal war in which the more powerful absorbed the weaker until the heptarchy was reduced to three kingdoms and ultimately to two Finally the kingdom of Wessex gained supremacy in the ninth century and the English nation was formed

#### SAXON ENGLAND

Thus *princeps* became *rex* It was not by voluntary union but by conquest The smaller kingdoms did not wholly lose their identity

THE GOVERNMENT OF SAXON ENGLAND however they became shires of the Saxon realm with an earl or ealdorman at the head of each At best England before the Norman conquest was a loose aggregation of tribal commonwealths divided by local feeling and the jealousies of the great earls<sup>1</sup> The

<sup>1</sup> Cf C W C Oman *England before the Normans* (London 1910) and C H Haskins *The Normans Their Art and History* (Cambridge 1915) pp 5-6

rulership of the king was rather tenuous his powers depended in large measure upon his own personal wisdom and vigor. The kingship was hereditary in the sense that it descended in the same family but there was a body of magnates the Witan which apparently had power to choose an heir other than the eldest son or even outside the ruling family if necessity arose. The Saxon king was the leader of his people in war he made laws or dooms with the concurrence of his Witan and he tried to see that these decrees were enforced.

The Witan (Witenagemot) or assembly of wise men was the king's great council. Its exact organization and powers we do not know but it had a variety of functions including the right to be consulted by the king on important matters. Only THE WITAN when a weak king was on the throne did it count for much as a governing body. Although it had no fixed membership it customarily included the chief officers of the royal household the bishops and abbots the ealdormen of the shires and the other magnates of the country.<sup>1</sup> There were no elective members and save for those whose great prominence made it impracticable to leave them out the king summoned whom he pleased hence the Witan varied in size from time to time. There was no national capital the Witan met periodically in different parts of England. The king presided at its meetings and directed its business. In theory at least the powers of the Witan seem to have included the assent to new legal usages the making of treaties and alliances the approval of taxes or levies and the regulation of ecclesiastical affairs. It was thus the high council of both state and church and also acted as a high court for the trial of important cases.

Since the Witan contained no elective members it was not a representative body but it was nevertheless looked upon as reflecting the national will and as a potential check upon the arbitrary power of the king. Not as a very dependable check however for the king could fill the Witan THE WITAN  
AS A CHECK  
ON THE KING with his own supporters and thus make sure that it would do his bidding. Still it formed a link between the king and his realm its meetings took him around the country where he could see or hear

<sup>1</sup> In the Witan held at Winchester in 934 for example there were present two archbishops four Welsh kings seven bishops four abbots twelve ealdormen and fifty-two royal thanes. F. W. Maitland *Constitutional History of England* (Cambridge, England 1908) p. 56.

about what was going on and it promoted the idea that the king should act in council not in obedience to his own caprice

During the Saxon period the great mass of the people dwelt in little villages and made their living from the land. Each village

SAXON LOCAL  
GOVERN-  
MENT

with the land belonging to it, formed a township which was the smallest unit of English social, political and economic life. Each township had its own local

1 THE  
TOWNSHIP  
AND THE  
HUNDRED

government which usually consisted of a township mote or town meeting and certain elective officers chief among whom was a reeve. Groups of townships were formed into hundreds or districts which seem to

have contained a hundred warriors or a hundred heads of families. Each hundred likewise had a local assembly which appears to have been made up of the reeve and four good men from each township.

Finally there was the shire with its shire mote which became the progenitor of the modern county and its county court. There is

2 THE SHIRE

some reason for believing that in its earlier stages this shire mote or court was a popular assembly of

all the free men who cared to attend but in time it came to be made up of the larger landowners and the officials of the church together with the Reeves and the other representatives of the townships. It met twice a year usually under the leadership of an aeldorman who was appointed by the king. There was also a shire reeve or sheriff similarly appointed and in the course of time this official displaced the aeldorman as the presiding officer of the shire assembly. The shire mote was a court rather than a council its main function was to hear and determine cases which were too important to be decided in the hundred mote especially cases relating to the ownership of land.<sup>1</sup>

There are three significant things about this Saxon system of local government. First it was measurably uniform throughout the

SIGNIFICANCE  
OF THE LOCAL  
GOVERNMENT

whole kingdom thus creating a bond of national unity. Second it laid the groundwork for the Anglo-Saxon system of local self government. The English

people obtained in township and shire their first lessons in the art of governing themselves. Finally and perhaps most significant of all is the fact that the government of the shire was based in theory at least upon the principle of representation. It was there that the idea of choosing representatives first gained a firm foothold. Men

<sup>1</sup> W. A. Morris *The Early English County Court* (Berkeley California 1926) and *The Medieval Sheriff* (Manchester 1927)

were chosen by their fellow freemen to sit in the court of the shire long before there were any elections to parliament. So when representation in parliament came the people were ready for it. It is no wonder that people of the English tongue have become skilled in the art of self government. There has been no time during the past thousand years when they have not been electing somebody to represent them somewhere—in township shire or borough in parish county or parliament.

The Saxon monarchy did not gain strength with the lapse of time. Its weakness provided an opportunity for the invasion of England by Danish tribes which overran a considerable part of the country and installed a line of Danish kings. After a season of disorder bloodshed and extortion the Saxon dynasty was restored but only for a brief interlude. The Norman conquest was at hand. In 1066 William of Normandy laid claim to the English throne and supported his claim by bringing an army across the Channel. After defeating his rival claimant in a decisive clash at Battle Abbey (also called Senlac or Hastings) William proceeded to Westminster where he was crowned on Christmas Day.

THE NORMAN  
CONQUEST

#### NORMAN ENGLAND

The coming of the Normans inaugurated a second and very important epoch in the evolution of the British constitution. But the Norman conquest like the American Revolution of seven centuries later is to be looked upon as a turning point rather than as a starting point in the development of representative institutions. The Norman conquerors did not root out the existing system of local government but merely modified it and superimposed some of their own institutions upon it. William desired to rule as king of the English; he wanted the good will of the people; hence he permitted the people to retain their ancient laws, institutions, and customs. He changed things only insofar as seemed necessary to ensure the strength of his own royal power and to establish a centralized rulership over his new kingdom. Thus there took place a fusion of Saxon and Norman political ideals with lasting advantage to the English nation. The old Saxon constitution was strong in the local areas but weak in the country as a whole; the Norman constitution became strong in both.

CONSTITU-  
TIONAL  
EFFECTS OF THE  
NORMAN  
CONQUEST

First among the significant developments of the Norman period was the increased power of the crown. The Saxon monarchy had

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|---------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1 THE INCREASED AUTHORITY OF THE CROWN      | been weak because local independence was strong. William set out to make himself every inch a king and by a variety of measures he succeeded. He curbed the power of the Saxon earls; he broke up their great estates and divided them among his own trusted followers to be held under feudal tenure as his vassals. He made himself head of the church and assumed the right to appoint the bishops. Most important of all, William and his successors drew the system of local government under their control by increasing the powers of the shire reeves or sheriffs. These sheriffs, who were appointed by the king and responsible to him alone, became the real rulers of the shires (or counties as the Normans preferred to call them). They enforced the king's will in all parts of the realm, maintained law and order, collected the taxes and turned them into the royal treasury. The aeldorman or earl disappeared from the Norman county court. <sup>1</sup> Finally, under William's successors, the crown increased its authority by developing a system of royal judges who went about from county to county hearing cases, deciding them in accordance with the same principles, and thus making the king's law common throughout the realm. |
| 2 THE DIVISION OF THE GREAT ESTATES         |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| 3 ROYAL SUPREMACY OVER THE CHURCH           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| 4 THE WORK OF THE SHERIFFS                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| 5 THE ITINERANT JUSTICES AND THE COMMON LAW |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |

The significance of all this royal centralization proved to be far reaching. It may sound like a paradox, but it is none the less true

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|-------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| SIGNIFICANCE OF THE GROWTH IN ROYAL POWER | that the growth of the royal power under the Normans and their successors paved the way for the ultimate triumph of English democracy. Representative government did not achieve its first victories in England because the barons and lords were strong but because they were weak. Restraints upon the king's authority in England could not be imposed by individual dukes and counts as in France, for there were none powerful enough. The curbing of the king, when the time came, had to be a joint enterprise, participated in by all. In other words, the noblemen and lesser landowners of |
|-------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

The 11th earl, however, has survived as one of the ranks in the British nobility.

The 11th earl, however, has survived as one of the ranks in the British nobility.



England were compelled to pool their strength against the monarchy and they seized upon parliament as the agency through which this might be effected. Then needing allies they finally took the people of the towns into camp and parliament became more broadly representative. The movement was aided as will be shown a little later by the fact that the king needed money and had to give liberal representation to the towns in order to get it. That is why historians speak of English democracy as a by-product of the royal supremacy.<sup>1</sup>

Under the Normans the old Witan became known as the Magnum Concilium or Great Council. This body like its predecessor was composed of officials and other high personages summoned by the king; no elective members were added. At its sessions which took place three times a year in William's reign there were present all the men of England as the chronicler puts it by which he meant all the men that amounted to much. The Great Council met in different parts of the country—at Westminster at Winchester or at Gloucester as the king happened to be—but eventually all its sessions were held at Westminster. It supposedly had the same general functions as the old Witan but its actual power was less because the king's authority had become greater and because all its members were now the king's vassals. It was the high court of the king and his chief advisory council. The king consulted it in the making of laws and the levying of new taxes. But most of the royal revenue came from feudal dues and for the collection of these the king needed nobody's approval. The Norman king was the largest private landowner and the richest man in the realm; his income was large enough to defray most of the national expenditures without recourse to any regular system of taxation.

Then there was the Curia Regis or Little Council. It is sometimes said that this was a different body from the Magnum Concilium and sometimes that the two were the same. They were in fact the same and yet not the same. The contradiction may be explained in this way. The Great Council met only at intervals three times a year at the most. But certain of its members notably the officers of the royal household (such as the chancellor the chamberlain the constable and the steward) were permanently

THE WITAN  
BECAME THE  
MAGNUM  
CONCILIUM

A NEW BODY  
"THE CURIA"  
WAS  
THE CURIA  
REGIS

<sup>1</sup> This matter is discussed at length in Henry Jones Ford, *Representative Government* (New York 1914).

with the king travelling with him wherever he went. This small body of officials and barons in permanent attendance on the king could be used at any time as a sort of executive council or court, and to these gatherings the name *Curia Regis* was applied. The king's wishes, the business in hand, the convenience of the barons—various things determined whether the big council or the little council should be consulted. In other words there were both plenary and restricted sessions of the same body, with no hard and fast line between the two in point of membership or jurisdiction. It is not improbable that sessions of the *Concilium* were devoted chiefly to larger questions of justice, finance and public policy, while meetings of the *Curia* were chiefly concerned with administrative and routine matters, but even of this we cannot be sure. There was a serene disregard for definiteness in mediaeval institutions.

The essential thing to be borne in mind is that the Norman and early Angevin kings governed England with the help of a single non-elective body which met either in formal session with a fairly large membership or informally with a smaller attendance. We do not know the extent to which the king felt himself bound to seek or be governed by its advice in either case. The Norman monarch judged and taxed, levied feudal dues on his vassals and commanded his army, declared the customs of the kingdom and changed them by royal command. He was absolute in theory and little short of it in fact. Nevertheless he did call the leaders of his people together, sought their advice, and sometimes followed it. This habit, under later kings who were not so strong, hardened into a usage and the usage became a constitutional principle. Out of the plenary sessions of the Great Council the British parliament arose; out of the *Curia* grew the privy council, the exchequer and the high courts of justice. So the frame of government in twentieth-century England owes much to this ancient council with its big and little sessions.

#### PLANTAGENET ENGLAND

The Norman political system was rough at the edges. But most of the crudities were polished off by Henry II, the Conqueror's great grandson. Henry restored, revived, extended and defined the organs of English government. A man of legal temperament, adroit and energetic, he infused new life into the administrative and judicial systems. He

THE WORK OF  
HENRY II  
(1154-1189).

elaborated the plan of sending royal judges on circuit through the counties appointed more competent sheriffs brought the jury system into general use and inaugurated a distinction between the administrative and the judicial functions of the Curia Regis. By holding more frequent sessions of the Great Council and by referring all important matters to it for deliberation he assured it a definite place as the forerunner of parliament.

Mention has been made of the fact that the Curia Regis originally concerned itself with both administrative and judicial matters making no distinction between these two fields of jurisdiction. But in due course it found that work could be expedited and improved by devoting separate sessions to different kinds of business - to the work of examining the sheriffs' accounts and to hearing appeals from the county courts for example. Gradually at any rate there took place a separation between the administrative and the judicial work of the Curia and with this came a bifurcation of its membership. One section continued as a permanent royal council later known as the privy council. The other confining itself to judicial business became the parent of the exchequer and the high courts of justice. It is not to be imagined however that this separation took place all at once or that it can be assigned to any single reign.<sup>1</sup> It came about gradually by halting steps and without conscious intent thus affording us an admirable illustration of the principle of evolution as applied to political institutions.

THE BEGINNING OF A SEPARATION BETWEEN THE JUDICIAL AND ADMINISTRATIVE WORK

Meanwhile a development was taking place in the legislative branch of the government although one should hesitate to explain that no clear distinction between executive and legislative functions was in the mind of the king, the council or anyone else at this early stage. The king stood in the public imagination as the chief lawgiver of the realm and the sanction of all law. Nevertheless a separation between legislative and executive work between lawmaking and administration became inevitable as the Great Council grew larger in its membership and as its work became more extensive.

THE EVOLUTION OF PARLIAMENT

This enlargement of the council came with the admission of the

<sup>1</sup> The separation began early in the twelfth century and was not completed until the middle of the fourteenth. Full details are given in J. F. Baldwin *The King's Council in England during the Middle Ages* (Oxford 1913) ch. p.

lesser landowners the knights of the shire as they were called. Only the great landowners had previously been summoned to the meetings. But King John in 1213 directed the sheriffs to send four good knights from every county to attend a session of the Great Council at Oxford. This and subsequent invitations of the same sort were not dictated by any new philosophy of popular representation but by altogether mercenary motives. The king wanted revenue; he desired to levy taxes upon all landed estates of whatever size and it seemed advisable (for it simplified the work of the royal taxgatherers) that the new taxes should be approved by a widely representative gathering.

Here we encounter accordingly the germ of the doctrine that there should be no taxation without representation. It was not conjured from the brain of Aristotle or any other political philosopher. John Plantagenet, king of England, simply found it easier to tax with representation than without it and it was his habit to choose the path of least resistance. But he builded better than he knew. He set in motion an idea that reverberated across the Atlantic five centuries after he had passed to his grave.

Be it borne in mind however that a summons to attend the Great Council was by no means looked upon as an honor in the thirteenth century. On the contrary it was regarded by great and small landowners alike as an imposition to be evaded if possible. A contemporary chronicler tells us how one gallant cavalier when his assembled fellow knights sought to choose him as their representative put spurs to his horse and tore off at full speed lest acceptance be wrung from him. The knight of the shire when elected in response to the royal summons had to travel to Westminster at his own expense and travel was difficult in those days. From the outlying parts of the kingdom the journey was a matter of weeks. There was neither joy nor emolument in the job. And when the knights arrived at the meeting place they were merely asked by the king to ratify some new taxes. Then they were sent home again. Nothing could be further from the truth than to imagine that the people of mediæval England any of the people clamored for representation in the Great Council of the realm. A summons to hold an election always came as the shadow of a new tax cast before them.

Then came Magna Carta the Great Charter of 1215. This document, by some of its provisions gave increased definiteness to the organization and powers of the Great Council. It stipulated that certain specified taxes could not be imposed by the king without the council's approval. It provided that all the great barons should be summoned individually and all the knights of the shire by writs addressed to the sheriffs. Still this charter was strongly baronial in tone and it did not require that membership in the Great Council should be made representative of the people. It assured no representation to the towns. Although schoolboy orators throughout the English speaking world perennially acclaim Magna Carta as the foundation of modern democracy it was in fact a treaty between the king and the barons of England in which the latter got all they could for themselves. Most of its provisions relate to the privileges of the church and the landowners only a very few have any relation to the rights of the common man. The idea that this charter forms the basis of trial by jury freedom of speech, and the right to vote is one of our most tenacious political myths.

MAGNA  
CARTA  
(1215)

There is a well known picture which is sometimes hung on the walls of American school rooms. It portrays King John with a worried look, a crown on his head and a quill pen in his hand affixing his signature to a long scroll which is supposed to contain the provisions of the Great Charter. Behind him is pitched a tent of nineteenth century design over which is unfurled a royal flag that did not come into use until long after John had been gathered to his fathers. All this is amusingly fantastic for the reason (among others) that John Plantagenet could not write a single word not even his own name. Magna Carta was not signed by the king it was merely assented to by him orally and sealed with the great seal of the realm and with the individual seals of twenty five barons who were designated to see that the provisions of the charter were respected. Four documents each of which profess to be the original have come down to us. Each differs somewhat in phraseology from the others.

THE LAY  
MAN'S IDEA  
OF THE  
DOCUMENT

Yet Magna Carta is properly regarded as a landmark in English constitutional history. It was more than a piece of class legislation.

The best book on the subject is W. S. M. Kitchin's *Magna Carta: A Commentary on the Great Charter*, 1887 (Glasgow 1907).

wrung from a frightened king by a group of baronial conspirators. For it definitely established the principle that the king on certain great issues must consult his council as a matter of law and not as a matter of choice. In other words it was a recital of what the barons of England looked upon as the constitutional customs of the realm. With this baronial interpretation the people seemed to agree. None of them flocked to the support of the king. They left him to stand alone. So while the provisions of the Great Charter guaranteed rights to bishops, barons and merchants rather than to the populace, a further extension was bound to follow. In its resounding Latin moreover the charter endowed Englishmen with one right which they have never let go and which their posterity beyond the seas have guarded with unremitting vigilance —

WHY IT IS  
A GREAT  
LANDMARK  
OF CIVIL  
LIBERTY

*Nullus liber homo capiatur vel imprisonetur aut dissaisatur aut outlageretur aut exultur aut aliquo modo destruatur nec super eum ibimus nec super eum mittemus nisi per legale iudicium parium suorum vel per legem terrae* <sup>1</sup> (*Article 39*)

But let us get back to the evolution of parliament. The charter of 1215 as has been said did not require that the Great Council should be placed upon a representative basis but it was not long before this principle gained acceptance. The advance is commonly associated with the name of Simon de Montfort, Earl of Leicester who is often called the Father of the House of Commons although he has no good claim to this attribute of paternity. What happened in short was this. During the reign of Henry III about fifty years after the signing of the charter a quarrel between the king and his barons arose over the royal attempt to impose some new taxes and both sides resorted to arms. The king was defeated and Simon de Montfort as leader of the barons became virtual dictator of the realm although the king was not formally deposed. But a dictator could no more govern without funds than could a king so Montfort had to solve the problem of finding a Great Council which would approve a tax levy. In 1265 therefore he took the step of summoning not only the bishops, barons and knights of the shire but two repre-

SIMON DE  
MONTFORT'S  
GREAT COUN-  
CIL (1265)

*No free man shall be arrested or imprisoned, dispossessed of his land or outwitted or exiled or in any other way harassed nor shall we impose upon him nor send him our commands save by the lawful judgment of his peers by the law of the land*

representatives from each of twenty-one boroughs or towns which were known to be friendly

Montfort was an adventurer shifty and self seeking His action in extending the basis of representation in the Great Council (or parliament as it was now beginning to be called) was not inspired by any allegiance to the principles of democracy.<sup>1</sup> He needed money His hold on the barons was weakening The towns were growing in population and wealth He wanted their support—and their financial contributions Hence his desire to draw them into the orbit of national taxation But he also had the instincts of a modern political boss and restricted his summons to those towns which he believed were favorable to him

So Montfort's parliament in 1265 with its earls barons bishops knights and townsmen was not a national parliament but rather a party convention—a packed convention at that And when Montfort was ousted from his dictatorship a little later the practice of summoning representatives from the towns or boroughs was discontinued Sessions of parliament were held from time to time during the next thirty years—usually with no borough representatives present Then in 1295 Edward I regularly summoned them once more He was raising a war and needed money from all elements the church, the barons the knights and the towns Hence Edward brought together what has come to be known in English history as the Model Parliament It was a large body a parliament in the true sense It met as a single chamber but voted its taxes by three divisions or estates in other words the clergy the barons and the knights and the townsmen each voted separately Each group was called into the presence of the king There they listened to his plea for money and gave assent—by their silence They did not sit being in the presence of the king

The term parliament was generally and loosely used until 1295 or even later Matthew of Paris speaks of a *magnam parliamentem* in 1257 [Stubbs, *Select Charters* (Oxford 1900) pp 330–331] and the *Annals of Winchester* refer to *parlamentum omnium magnatum* in 1270 (*ibid.* p 337) The Rolls of Parliament begin with the year 1216 but they do not cover all the meetings until the end of the century

It included two archbishops, eighteen bishops, sixty-six abbots, three heads of religious order, nine earls, forty-one barons, sixty-one knights, fifth and one hundred and seventy-two representatives from the towns For full account see D. Pasquet, *A Essay on the Origin of the House of Commons* (Cambridge 1925)

MONTFORT'S  
MOTIVES

THE MODEL  
PARLIAMENT  
(1295)

they stood. The session did not last long just long enough to unloose the purse strings.

In several subsequent parliaments the three estates met and voted separately but this three chamber arrangement never became a fixed parliamentary practice. Instead there took place a coalescence which eventually made parliament a bicameral body. The higher clergy and the great barons drew together for they had interests in common. Both were large landowners both were summoned to parliament by individual writs and hence were members of it by tenure not by election. On the other hand a similar identity of interest drew together the knights of the shire and the townsmen for both were present in a representative capacity. Meanwhile the lower clergy were dropped out of parliament altogether.

Thus was accomplished the moulding of parliament into two chambers which came to be known as the House of Lords and the House of Commons. The process of bifurcation moved slowly and was not entirely completed for at least a hundred years after 1295. It was an important step one of the most significant in the entire history of government for it started the bicameral system on its way around the world. No one planned or guided this separation and coalescence it was merely the natural working out of the social forces of the age. Regarded as of little or no consequence in the earlier centuries this division of the English parliament into two chambers gave it a frame that has been transmitted to every other great legislative body on earth.<sup>1</sup>

It has been said that the knights and the townsmen were present as representatives but how and by whom were they elected? The knights of the shire were chosen in the county court which was in effect a county council. Any landowner whether he had attained the rank of knighthood or not was eligible. The burgesses or representatives from the boroughs were chosen by the freemen of these towns at meetings called for the purpose. As a matter of practice the elections were decided by a relatively few landowners in each shire and by the leading citizens of each parliamentary borough. Voting

was a customised to think of the two-chamber system as having been universal from the outset. But the Scottish parliamentary system included only one legislative chamber the French developed three estates and in Sweden the legislature had four houses.



was by a show of hands and rarely was there a contest. More often it was a matter of persuading someone to accept.

Being a member of the House of Commons in mediæval England brought neither profit nor honor nor authority. The commoners were regarded as of no account save for their assent to the granting of funds. In the great hall at Westminster where parliament assembled the bishops and barons sat in front of a throne which the king occupied, his chancellor and other officials flanking him on either side. Below and beyond the bar of the house at the opposite end from the throne stood the knights of the shire and the burgesses. Their presence was not essential to a quorum. The king through his chancellor presented the immediate business in hand whereupon the commoners retired to the refectory of the building and debated the matter. Having chosen a spokesman or speaker they trooped back into the hall and this speaker with profuse expressions of loyalty to the crown announced the result of their deliberations. That was the extent of their share in the work of parliament.

WHAT THEY  
DID AFTER  
THEY WERE  
ELECTED

One should not make the error of thinking that parliament in the fourteenth century was primarily a lawmaking body. The king made the laws with the assent of the lords, spiritual and temporal. The commoners merely presented petitions and assented to the levy of taxes. The bishops and barons far outweighed them in influence. But the commoners gradually began to gain authority. They acquired in due course the right to be first considered in money matters. Their possession of this financial initiative was shown in 1414 when the king agreed that all grants of taxes should be first made by the commoners and then assented to by the lords.

THE FIRST  
OF  
PARLIAMENT  
VOTE

The right of presenting petitions likewise became the basis of an actual share in the making of laws. For it naturally happened that many individual petitions related to the same general principle. In such cases it became the custom to merge them into a common petition, a collective petition presented by the house as a whole. Such a petition came to be known as an address to the throne. It is a united request for royal action. In the fourteenth century the king made the laws with the assent of the commons. In the fifteenth century he found himself making them by and with the advice of

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3 TO SHARE  
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THE LAWS

the lord at the re-  
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It was in this way

slowly and almost imperceptibly that the commons acquired an actual share in the making of the laws<sup>1</sup>. During the Wars of the Roses which covered a considerable portion of the fifteenth century the commons gained on the lords because the latter devoted so much of their attention to quarrelling among themselves. These wars were chiefly waged by noblemen and their retainers: the towns took little part in the struggle. Before they were over the majority of the barons had been killed off and their titles extinguished. New noblemen were created of course but they did not have the prestige of the older families.

#### TUDOR AND STUART ENGLAND

Still the House of Commons was not a powerful body even in the days of Henry VIII and Elizabeth—that is in the sixteenth century.

ENGLAND'S  
GOVERNMENT  
AT THE BE-  
GINNING OF  
THE MODERN  
EPOCH

The crown remained the pivotal point in the government. When the commons showed themselves obstinate the monarch did not disdain to use threats and coercion. Henry VIII for example warned them on one occasion that unless certain measures

were passed he would send a batch of commons to the gallows. Queen Elizabeth sent two members of the Commons to prison for their persistence in advocating legislative proposals which were distasteful to her. The House contained at this time about three hundred members elected by the freeholders in the counties and the freemen of the towns<sup>2</sup>. Elections were held irregularly for there was no requirement by law or custom that they should be held on stated dates. When the king wanted money he called an election. Then if the House of Commons proved complaisant, he continued it in existence for several years; otherwise he dissolved it speedily. Sessions were brief: they usually lasted only a few days or at most a few weeks. In the reign of Henry VIII nine parliaments were elected. One sat for seven years, two sat for three years each, the other six

<sup>1</sup> Wallace Notestein, *The Making of the House of Commons* (London, 1926). See also S. B. Chrimes, *English Constitutional History in the Fifteenth Century* (New York, 1936) and Howard L. Gray, *The Influence of the Commons on Early Legislation* (Cambridge Mass. 1937).

<sup>2</sup> A freeholder was one who owned land with an estimated rental value of forty shillings per annum or more. A freeman was anyone who possessed the "freedom" of a town. Originally a considerable percentage of the adult male residents were freemen but this category was narrowed. For a full account of the English fiscal system at this stage of its development see K. Pickthorne, *Early Tudor Government* (2 vols. New York, 1934).

were quickly dissolved. Queen Elizabeth summoned parliament more regularly and (outwardly at least) accepted its action on many important matters.

Soon after the death of Elizabeth however this waxing strength of parliamentary government was put to a severe test. Leaving no nearer relatives Elizabeth passed the English throne to her cousin James Stuart of Scotland who in 1603 was crowned king of England as James I. He claimed to rule by divine right and laid great stress upon his royal prerogatives. This insistence soon precipitated a conflict with the House of Commons the immediate issue being the right of the crown to lay certain taxes without the consent of parliament.<sup>1</sup> But matters did not come to an open rupture for the king was careful not to press his doctrines too far. When James could not get laws he resorted to ordinances.

THE CROWN  
AND PARLI-  
AMENT UNDER  
THE STUARTS

His son and successor Charles I was neither so cautious nor so fortunate. Surrounding himself with rash self-confident and unwise counsellors he soon brought his relations with parliament to a critical state. In 1628 both Houses united in presenting to Charles the famous Petition of Right.

THE OPEN  
BREACH

which definitely asserted the principle that no man should be compelled to yield any gift, loan, benevolence, or tax without the consent of parliament. The king under pressure assented to the Petition but he did not keep his word. Various old impositions were revived and levied without parliamentary authority. When parliament reiterated its protest the king sent the members home and for eleven years ruled the kingdom without calling a parliament at all. England was on the verge of despotism and only managed to escape it by launching the Great Rebellion. On the eve of hostilities Charles hastily summoned a new parliament but it proved no more amenable than his predecessors. It adopted the Grand Remonstrance of 1641 which was in effect an appeal to the people against the crown.

The crown did not question parliament's right to control ordinary taxes but held that certain peculiar levies called impositions (additional customs duties) were within the royal prerogative.

Laws were not made by the king in parliament ordinances were issued by the king alone. It is significant that in the King James version of the English Bible (Ezekiel xlviii. 1) the translators wrote: 'And thou shalt receive them in ordinances and laws.' They placed ordinances first.

A good survey of these controversies is given in J. R. Tanner *The Constitution of Great Britain in the Seventeenth Century* (Cambridge 1938).

In the early stages of the rebellion the king's forces had the advantage but eventually Oliver Cromwell succeeded in reorganizing the parliamentary army and gaining the upper hand. The king took refuge with the Scots army which delivered him into the hands of parliament. After prolonged negotiations he was put on trial, condemned and executed (1649). Thereupon governmental changes came in quick succession: the monarchy and the House of Lords were abolished; a commonwealth or republic was proclaimed; a written constitution known as the *Instrument of Government* was adopted and Cromwell was named Lord Protector. But he no less than his royal predecessor found the House of Commons a difficult body to deal with and his new constitution failed to take root.<sup>1</sup> It became increasingly unpopular with the people and was only maintained in operation by the personal force of Cromwell himself. The Lord Protector died in 1658 and within a short time the monarchy was restored.

The restoration of the Stuart dynasty indicated the strength which the monarchical tradition had acquired in Britain. The old grievances were for the moment forgotten. It was assumed that Charles II, the new king, would adopt the principle of parliamentary supremacy and in form he did so. During the twenty-five years of his reign he had several conflicts with parliament but never risked his throne. His brother James II, who succeeded to the throne in 1685, was a headstrong, intolerant individual with narrow views and no imagination. Moreover, he was unfortunate in the choice of his advisers and made himself trouble by endeavoring to restore the Roman Catholic religion in England. Within a short time after his accession he quarrelled with parliament over the right to exercise his dispensing power, as it was called, that is, the right to suspend the operation of certain laws. This drove the parliamentary leaders to the plan of bringing in a new monarch. William, Prince of Orange, was therefore invited to aid in protecting the constitutional liberties of the realm and the result was the Revolution of

THE GREAT  
REBELLION  
AND THE  
COMMON-  
WEALTH

THE STUART  
RESTORATION  
(1660) AND  
THE ABOLITION  
OF  
JAMES II  
(1688)

In 1656 when the House decided to assert its right to control the militia Cromwell appeared on the floor giving the members a scathing rebuke, dissolved the House and sent them home. And when a new parliament was elected he saw to it that no members opposed him were admitted. Subsequently however these opponents were permitted to take their seats and trouble again resulted with the same outcome—an other dissolution.

1688 Finding himself deserted by all parties James fled to France and the Stuart monarchy came to an end

While this struggle between the crown and parliament was going on there took place a strengthening of the king's council now officially known as the privy council. It became a large body including at one stage as many as forty members. Its functions were still called advisory but they were in reality much more than that. It virtually exercised some of the king's prerogatives for him. Through its committees or boards and by means of orders in council it regulated trade supervised the administration of justice took control of finance and left no department of the government outside its ceaseless supervision. Its right to issue orders or ordinances with the force of law made it in some ways a legislative body more influential than parliament itself.

DEVELOPMENT OF THE PRIVY COUNCIL

It was the theory of the government that the king should be guided by the advice of his privy council. But when this body had become large and did most of its work through committees it could no longer perform this advisory function to the king's taste. In the public mind its unwieldiness and inefficiency were held responsible for some English naval reverses at this time. So Charles II adopted the plan of a cabal<sup>1</sup> or inner circle of privy councillors to advise him on all important and confidential matters. This action was much resented by the other councillors and the practice was temporarily abandoned but it was soon resumed and became the forerunner of the cabinet system.

THE CABAL OF 1667

#### HANOVERIAN ENGLAND

As a result of the Revolution William and Mary became joint monarchs of Great Britain in 1689. In order that there might be no recurrence of friction between the crown and parliament the latter drew up and adopted a document known as the Bill of Rights. This document while it did not profess to be a constitution in the ordinary sense of the term set forth the basic principles of English government as they were understood by parliament at the time. Enumerating the various issues which had arisen between the king and his people it proclaimed the legislative supremacy of parliament denied the authority of the crown to levy any tax or impost without parliamentary

THE BILL OF RIGHTS (1689)

<sup>1</sup> The word was formed by the initials of the first members—Clifford Ashley B. Cunningham A. L. G. and Lord R. Dal.

consent insisted that parliament should be regularly called and set forth a list of individual liberties which were not to be infringed

The Bill of Rights accordingly marks the culminating stage in the evolution of the fundamentals. The outlines of the British constitution were now practically complete nothing remained but to fill in the details and to elaborate the machinery of administration. Britain had become a limited monarchy. Parliament had gained a mastery over the royal prerogatives. It was in a position to control the ministers of the crown even though the principle of ministerial responsibility had not as yet become established in its present form. The changes that have taken place in the British government since 1689 have not altered its general outlines.

But although there has been no reconstruction of the framework, some notable changes have taken place in the practical workings of English government. The most significant among these are (a) the continued narrowing of the monarch's actual powers, (b) the rise of the cabinet and the fixing of its responsibility to parliament, (c) the democratization of the House of Commons, (d) the reduction in the powers of the House of Lords, and (e) the growth of the party system.

Although the Bill of Rights asserted the legislative supremacy of parliament, it did not deny to the crown an essential share in legislation. William and Mary made themselves real factors in the conduct of the government and chose their ministers without deference to the will of parliament. But their successors, George I and George II, were Hanoverians by birth, with little or no interest in English affairs. They could not speak the English language, hence it was useless for them to attend meetings of their ministers. They neither understood their prerogatives nor cared to assert them. If England could only further the ambitions of their beloved Hanoverian court and parliament, we were willing to let parliament have its way. So they chose advisers who were acceptable to the House of Commons and let the House control them. George III, when he came to the throne, made a brave attempt to revive some of the royal influence which his grandfather and great grandfather had relinquished, but it was too late. Parliament had taken the reins and was determined to keep them.

CONSTITUTIONAL  
CHANGES  
SINCE 1689

1. THE DI-  
MINISHED  
POWERS OF  
THE MON-  
ARCH

With the decline in the personal authority of the king came a rise in the power of his ministers. It is often said that the cabal of Charles II's reign was the progenitor of the present day cabinet, and in a sense it was but the real reason for the cabinet's rise to power was the necessity of providing a channel through which the newly asserted supremacy of parliament over the king could be exercised. It was soon discovered that things went along with much less friction when the members of the cabinet were chosen from among those members of the privy council who belonged to the dominant party (Whig or Tory) in the House of Commons. No statute or resolution of parliament forced the king to restrict his choice to members of the majority group; it was merely the logical thing to do. A king was sure to get himself into trouble by selecting a prime minister who could not control parliament; it was easy to avoid trouble by selecting a prime minister who could. Sir Robert Walpole was the first royal adviser to whom the term prime minister can properly be applied. He held office at the will of parliament. When he resigned in 1742 because of an adverse vote in the House of Commons he established a precedent which is perhaps the most important of all provisions in the unbroken constitution of this country. 14873 13

The democratization of English government is a third feature of the past two centuries. The House of Commons two hundred years ago was a representative body in form and an unrepresentative body in fact. It did not represent the people of Great Britain or reflect public opinion upon matters of national policy. This situation was due to the gradual narrowing of the parliamentary suffrage and to the fact that although the population had been greatly shifted by the rise of the factory system and the decline of agriculture there had been no redistricting of the country for election purposes. The Reform Act of 1832 changed all this. It liberalized the suffrage and in some degree adjusted representation to population. It made the House of Commons a representative body in fact as in name, thereby enhancing its strength and prestige. Other reform acts have followed at intervals; the last of them in 1918.

The fourth important change relates to the powers of the House of Lords. These have been curtailed. From time to time, especially during the closing decades of the nineteenth century, the Lords and Commons came into collision and the former were able to prevent

2 THE EVOLU-  
TION OF  
THE CABINET

3 THE  
DEMOCRATIZA-  
TION  
OF THE  
COMMONS

the enactment of measures which the Commons had passed by large majorities. These conflicts engendered much political bitterness and gave impetus to a movement for curbing the authority of the upper chamber. But not until 1911 did this movement come to a head. The immediate occasion was the action of the Lords in rejecting a finance bill which the Commons was determined to place on the statute book. The Commons then decided that never again should the hereditary chamber be in a position to balk its will and to that end the Parliament Act was put through both Houses the Lords assenting to it under a threat that if they did not do so the upper House would be swamped by a wholesale creation of new peers. The Parliament Act definitely settled the supremacy of the Commons in all cases of disagreement.

Finally the actual workings of British government have been greatly influenced during the past two centuries by the rise of political parties. We have now grown so accustomed to party organizations, party progress and party activities that it is difficult to visualize a system of representative government without them. There were political factions in English history long before 1689—Lancastrians and Yorkists, Cavaliers and Roundheads, Petitioners and Abhorers but they were not political parties in the modern sense. None of them ever conceded that its opponents had any right to exist. When one faction gained control of the government its patriotic duty was to harry the other faction out of the land.

It was not until after 1689 that Englishmen reconciled themselves to the idea that men could be opposed to the existing government without being enemies of the state. Men could be in opposition without being rebels. Indeed it slowly came to be realized that a strong opposition in parliament was a wholesome spur to efficient administration because public opinion was in the end the deciding factor. So the nineteenth century witnessed a general acceptance of the party system with all its implications. The minority in parliament were no longer known as the king's enemies but as His Majesty's loyal opposition. The insertion of the term *loyal* in this phrase is of great significance. It points to the most important change that has been wrought in the spirit of English parliamentary institutions during the past two hundred years.

Now the foregoing are not the only changes that have come into



the practice of British government since the days of George III and the American Revolution. Scotland entered into a parliamentary union with England in 1707. Ireland was drawn into this union in 1800 but most of Ireland went out of it in 1922 when the Irish Free State was created. Meanwhile a great overseas empire was built up consisting of many dominions, colonies and protectorates. The relations of these various territories with the mother country have been gradually determined partly by usage and partly by statute including the notable Statute of Westminster (1931). The relations between Britain and India have also been altered and recast especially during recent years. All this and a great deal more has been accomplished without any radical reconstruction of the government at home. The essentials of the British constitution have undergone no fundamental change by reason of this transformation from a small kingdom of a few million people into a world empire of nearly half a billion.

OTHER CON-  
STITUTIONAL  
DEVELOP-  
MENTS DUR-  
ING THE PAST  
TWO CEN-  
TURIES

**CONSTITUTIONAL DEVELOPMENT.** There is no end of material on the subject of the foregoing chapter. For the American student the most useful brief survey are the *Outline Sketch of English Constitutional History* by George Burton Adams (New Haven 1918) and F. C. Montague *Elements of English Constitutional History* (London 1936). More extensive accounts are in F. W. Maitland *Constitutional History of England* (Cambridge 1908) and George B. Adams *Constitutional History of England* (New York 1921). A still more comprehensive but not altogether reliable work is Hannys Taylor *Origins and Growth of the English Constitution* (2 vols. Boston 1898). A. B. White *The Making of the English Constitution* (revised edition New York, 1925) covers the period to 1485.

**GENERAL HISTORIES.** Those who wish to delve more deeply into the subject will find satisfaction in Charles Oman *England before the Norman Conquest* (London 1910), H. W. C. Davis *England and the Normans and Angles* (Oxford 1905), T. F. Tout, *History of England from the Accession of Henry III to the Death of Edward III* (London 1905), William Stubbs *Constitutional History of England* (6th edition 3 vols. Oxford 1903), Sir Frederick Pollock and F. W. Maitland *History of English Law* (7 vols. Cambridge 1898), A. F. Pollard *History of England from the Accession of Edward VI to the Death of Elizabeth* (London, 1910), F. C. Montague *History of England from the Accession of James I to the Restoration* (London 1907), G. M. Trevelyan *England under the Stuarts* (London 1904), Spence Walpole *History of England* (6 vols. New York 1902-1905) and Sir Thomas Erskine May and Sir

Thomas Holland *Constitutional History of England* (new edition 3 vols London 1912)

**THE EVOLUTION OF PARLIAMENT** The best single volume on the development of parliament is A F Pollard *The Evolution of Parliament* (new edition London 1926) but a longer and older work G B Smith, *History of the English Parliament* (2 vols London 1892) is still useful. Books of a more special nature to which attention should be called are G B Adams, *Council and Courts: Anglo-Norman England* (New Haven 1926) H J Robinson *The Power of the Purse: A Brief Study of Constitutional History* (London 1928) C H McIlvaine *The High Court of Parliament* (New Haven 1910) M McKisack *The Parliamentary Representation of the English Boroughs during the Middle Ages* (New York 1932) and R G Usher *Institutional History of the House of Commons 1547-1641* (St Louis 1924)

**ORIGIN AND GROWTH OF THE PRIVY COUNCIL AND THE CABINET** On the development of the privy council and the cabinet further discussions may be conveniently found in J F Baldwin *The King's Council: England during the Middle Ages* (New York, 1913) E R. Turner *The Cabinet Council of England in the Seventeenth and Eighteenth Centuries* (Baltimore 1932) E Percy *The Privy Council under the Tudors* (Oxford 1907) M Fitzroy *History of the Privy Council* (London 1928) T F Tout, *Chapter in the Administrative History of Mediaeval England* (6 vols Manchester 1920-1933) A V Dicey *The Privy Council* (Oxford 1887) R H Gifford *The King's Government* (London 1913) and Mary T Blauvelt *The Development of Cabinet Government in England* (New York 1902)

**CHARTERS AND GREAT STATUTES** The more important charters and allied documents may be found in William Stubbs *Select Charters and Other Illustrations of English Constitutional History* (9th edition Oxford 1913) which covers the period to about 1300 E C Lodge and G A Thornton *English Constitutional Documents 1307-1485* (Cambridge 1935) G W Prothero *Select Statutes and Other Constitutional Documents* (4th edition Oxford 1913) covering the reigns of Elizabeth and James I and S R. Girdine *Constitutional Documents of the Puritan Revolution* which deals with the period 1625-1660 C G Robertson *Select Statutes Cases and Documents to Illustrate English Constitutional History* (revised edition London 1913) covers the more recent years

**CURRENT HISTORY** A review of current political events is given in the *Annual Register* which has regularly appeared since 1759

**BIBLIOGRAPHY** For extensive bibliographical information concerning all phases of English history reference may be made to the section on Great Britain and Ireland edited by Arthur L. Cross in the *Guide to Historical Literature* published by The Macmillan Company in 1931 (pp 477-561) Attention should also be called to Sidney J M Low and F S Pullen *Dictionary of English History* (revised edition London 1928) which contains brief articles with bibliographical references on events and personages

## CHAPTER IV ✓

### THE CROWN

Lex fuit egem what power the king hath he hath t by l w th bounds and limits of t ar kn wn —*Richard Hooker* (1594)

Who rules England? asked a Stuart satirist The king rules England of course But who rules the king? The duke Who rules the duke? The devil Nowadays it is the crown not the king that rules England and rules by the advice of the prime minister who in turn is bedeviled by the caprice of the House of Commons There are many subtle distinctions in the vernacular of British government but none more vital as Gladstone once remarked than the distinction between the *kin* and the *crown* between the monarch as a person and monarchy as an institution There is a world of difference between the two yet it is often overlooked even by Englishmen themselves In everyday speech they attribute to their king as an individual many prerogatives which belong to the office that he holds These prerogatives do not in fact belong to George VI but to an abstraction known as the crown of which the king is merely the physical embodiment It might just as well be called The Consent of the Governed or The Will of the People

The whole development of the British constitution in fact has been marked by a steady transfer of powers and prerogatives from the king as a personage to the crown as a concept The personal status of the king has not been greatly altered he has always been and still is above the law but parliament has enchained the crown and has bound it to definite modes of procedure<sup>1</sup> By this process the official acts of the king have been brought within control of the laws and customs of the realm This gradual establishment of

THE KING  
A. D. THE  
CROWN

THE TRANS-  
FER OF POWER  
FROM THE  
KING TO THE  
CROWN

This notion did not extend to the king's personal affairs—as events connected with the abdication of Edward VIII disclosed The king's life and that of his wife have been restricted since the seventeenth century Now it would seem to be established that parliament, through the prime minister may control his choice of a wife so long as his duties to be king

parliamentary control over the royal prerogative covered a long period it began with Magna Carta or earlier and was not fully completed until well into the nineteenth century The issue indeed was much in doubt prior to the expulsion of James II but at that point the crisis passed The Revolution of 1688 involved more than the substitution of one king for another It marked a very important stage in the transfer of political functions from a personality to an institution

The distinction between the king and the crown is reflected in the cry that 'The king is dead long live the king!' What this announcement of a royal demise really means is **THE KING OR THE CROWN** The king is dead long live the crown long live the office which one monarch has passed on to another The death of a king makes no more difference in the powers and duties of the crown than takes place when one president of a republic replaces another The crown is an artificial or juristic person, it is an institution, and it never dies The powers functions and prerogatives of the crown are not suspended by the death of a king even for a single moment

Now if this distinction be kept in mind it will serve to clarify much that is puzzling to the foreign student of British political institutions **IMPORTANCE OF DISTINCTION BETWEEN THE KING AND THE CROWN** One reads in the textbooks on English government that the crown has extensive powers that it is the fountain of justice and the chief executive of the realm that it appoints all civil officers commands the army and navy makes treaties pardons criminals summons and dissolves parliament and does all manner of great things—which is quite true inasmuch as the crown is the agency through which all these things are done But in the very same pages one also reads that the king has long ceased to be a directing factor in government that he can perform virtually no official act on his own authority that he is merely a symbol of the nation's unity—all of which is likewise true These statements appear to be widely at variance but they are easy to reconcile when it is pointed out that the powers which appertain to the crown are not exercised by the king of his own volition but at the behest of those who express the will of the people.

Writers on English government have contributed to the mystification of American students by dramatically telling the world the crown could disband the British army sell off the navy begin a war give away British territory make every British subject

a peer dismiss all officers of government pardon every criminal in the realm and do a lot of other astoundingly despotic things It is true that the crown could do all this and more—which is only a simplified way of saying that the king on the advice of his ministers could do them with the proviso that these ministers possess the confidence of a House of Commons which represents the British people Two similar assertions but they have a different sound! The will of the nation is supreme in England as in every other country which maintains a system of truly representative government Whether this national will is made effective through ministers acting in the name of the crown or through ministers acting in the name of parliament, does not make a great deal of difference The essential thing is that it is made effective

LEGAL RIGHT  
AND ACTUAL  
POWERS

During the past ten centuries England has had fifty one monarchs so that the average reign has been about twenty years Of these rulers all except four have been men The longest reign was that of Queen Victoria sixty four years while the shortest was that of Edward V a few months in 1483 For only eleven years in all her history has England been without a titular monarch namely during the interlude of the Puritan Revolution and Cromwell's Commonwealth

KINGS AND  
QUEENS

The British crown is an hereditary institution which parliament regulates by rules of succession The existing rules of succession were established by it in 1701 Briefly they provide that the crown shall descend in perpetuity through the heirs of the Princess Sophia of Hanover who was a granddaughter of King James I Hence the present royal family was commonly designated until 1917 as the House of Hanover Then in the flood tide of anti Teutonic feeling it was changed to the House of Windsor Supplation is made in the rules of succession that only Protestants are eligible Until 1910 each monarch at his or her coronation was required to take an oath abjuring the doctrines of the Roman Catholic church but this has now been replaced by a declaration that the monarch is a faithful Protestant all reference to any other religious affiliation being omitted The title borne by the British monarch at the present time is as follows George by the Grace of God of Great Britain Ireland and the British Dominions beyond the Seas King Emperor of India, Defender of the Faith

TRANSMISSION TO THE  
CROWN

By usage the crown descends according to the principle of primogeniture, that is to say elder sons are preferred to younger. Male heirs are preferred to female heirs of the same degree.<sup>1</sup> In default of all heirs male or female parliament would have to provide for a new dynasty by amending the rules of succession. The eldest surviving son of a reigning monarch customarily bears the title Prince of Wales, but this does not imply any governmental connection with Wales, nor does it endow him with any political authority over that portion of Great Britain. At present there is no Prince of Wales. The immediate heir to the throne is the king's eldest daughter Princess Elizabeth.

A British king may abdicate his throne, as Edward VIII did in 1936. The whole story of the events and discussions which preceded this abdication has never been made public and perhaps never will be, but the general situation was explained by the prime minister to parliament. On the face of things it was simple enough. The king, who had remained a bachelor until after he was forty years of age, desired to marry a woman who was obtaining a divorce from her second husband for this purpose. He proposed moreover that after such marriage his wife should not take the title of queen. To this proposal the prime minister replied that such an arrangement would not be legally possible without a special act of parliament and that the ministers would not advise parliament to pass such an act. Meanwhile the prime ministers of the various British dominions were consulted and declared themselves unfavorable to the king's proposal. Confronted with the alternative of giving up his proposed marriage or his throne, Edward VIII chose the latter course and signed an act of voluntary abdication in December 1936. The succession of his next younger brother, the Duke of York, was thereupon declared and confirmed by parliament.

The accession of a new king is customarily followed by a coronation, but this ceremony has no legal significance. It adds nothing

<sup>1</sup> There is, of course, an important legal distinction between a queen who succeeds to the crown in her own right, and a queen who gains her title by being the wife of a king. The former exercises the prerogatives of the crown; the latter does not. The husband of a queen who reigns in her own right does not bear the title king. Queen Victoria's husband was given the title Prince Consort.

The hair of the throne used at the coronation of every British monarch since the time of Edward I (1272-1307) is a homely affair with a large cone encased

to the authority of the crown. If the succession passes to a prince or princess who is under eighteen years of age a regency is established to serve until that age is attained. Prior to 1937 there were no fixed rules governing the choice of a regent. Each case was dealt with as it arose but usually some relative of the young king or queen was named. The Regency Act of 1937 now definitely provides that the nearest adult heir shall serve as regent during the minority of a monarch. Provision is also made in the statute that the regent shall serve during any period when the monarch is prevented by any infirmity of mind or body which renders him incapable of performing the royal functions. Where illness or absence from the country prevents either the monarch or the regent from promptly attending to duty it is provided that a commission of five counsellors of state shall be temporarily vested with the royal prerogative.

In connection with this matter an interesting question arose namely whether the new arrangement with respect to regencies would require the assent of all the British dominions

For by the terms of the Statute of Westminster (1931) it is provided that any alteration in the laws touching the succession to the throne shall require the assent of the parliaments of the various dominions as well as the approval of the British parliament. Does the establishment of a regency come within the scope of this provision? There is some difference of opinion on the point.<sup>1</sup> The Regency Act of 1937 avoided the issue by stipulating that a regency established under its provisions shall be for the United Kingdom and the crown colonies alone. The parliament of the various dominions may pass similar regency acts if they see fit and it is probable that some of them will do so. The nearest adult heir to the British throne at the present time is the Duke of Gloucester.

The British king receives a large annual grant from the national

beneath the set. The t d t n s and many Engl h men bel t that th is  
th d ucal t n n wh h th p trar h J b p llo w d has h d t B th l  
A d g t th l g ad th t n was m d t lgypt by th ns of Jac b  
tak n th to Spain d l t to J l d wh t w a p d pon T a Hill  
F nally i was b ght cros t Sc dland d d post d n th Abbey f Sc  
wh n Edward I took t t E gland n 1297 G gists wh h exam n d th  
t n s e t h w e v that t is p f Scott h s a d t c nd ould n t have  
m ut f any e logical form t n fou d n Pal t

F d c u s s i o n f t h m t t s e e A B E n t T h e A g d T h e I m p C o m (L o d o 1936) h a p

treasury but it was not always so. In the early stages of the monarchy it was the understanding that the king should live of his own—in other words pay his own way. The Norman and Plantagenet kings were great feudal landowners and derived large revenues from their estates. Out of this income they were expected to defray all their personal expenses including the maintenance of the royal court. They were even expected to provide for the ordinary expenses of the nation. Everything in the way of a national levy was frowned upon in early days unless there was some special occasion for it, such as a war and even then there was a good deal of grumbling. But as the national expenditures grew larger it became the custom to call upon parliament for special grants. These grants of course, gradually became bigger and more frequent.

Until 1689 however no distinction was made between funds granted for the monarch's personal use and those appropriated for public purposes. Then began the practice of making such a separation which gradually became clear and complete. So parliament now fixes, at the accession of each new king an annual sum to be paid from the national treasury for the support of the ruling monarch and the immediate members of the royal family.<sup>1</sup> This grant is known as the Civil List. It is made partly for specific purposes and partly in a lump sum which the monarch can spend as he pleases. At present it amounts to about four hundred thousand pounds per annum.



#### THE POWERS OF THE CROWN

Originally the powers of the crown were deemed to be prerogatives which inhered in the person of the monarch. They had not been conferred upon him by action of parliament or of any other body. Some of the crown's prerogatives at the present day represent a survival of this prerogative but most of it has been accumulated by usage or

This does not mean, however that the monarch has no personal income. On the contrary the British king as an individual has a very large income part from the annual sum paid to him by parliament—how large is known only to himself, for he is under no obligation to disclose it to anybody. As Duke of Lancaster moreover the king still enjoys the revenues of that ancient duchy. These revenues have never been surrendered to parliament and are in addition to the allowances granted in the Civil List. See the discussion of 'The Revenues and Property of the King' in A. B. Keith *Principles and Rights of the Crown* (London 1936).



conferred by positive action of parliament. Parliament has bestowed powers on the crown from time to time; it has also taken others away. A few prerogatives of the crown have been lost by long disuse. In a word, therefore, the powers of the crown are merely those which parliament permits it to have and to hold.

Some writers on the British constitution have drawn a distinction between the *prerogatives* of the crown and the *powers* of the crown, but the difference is of no practical importance because there is no authority vested in the crown, however derived, which parliament cannot take away if it chooses. So whether a certain function of the crown harks back to the days of royal absolutism or has evolved in the process of constitutional development is a matter of purely antiquarian interest. The all important fact is that the crown in all that it does serves as the executive agent of the British people and is under the control of parliament.

But the crown is not only the chief executive in the British scheme of government. It is an integral part of the national legislature as well. Its assent is required in the making of laws. The crown is likewise the fountain of justice and the dispenser of pardons. Thus it forms a part of the executive, legislative, and judicial mechanism.

All this crops out in the nomenclature of British administration. Arrests are made in His Majesty's name. Criminal cases are listed in the courts as *Rex versus So and So*. In his public utterances the king speaks of my government, my ministers, my ambassadors, and my people. Britishers call themselves subjects of the king—not citizens of Great Britain. These expressions, however, are merely the survivals of ancient usage; they do not point to the exercise of any personal authority on His Majesty's part. The substance of power has departed, leaving only the shadows behind. Yet the persistence of this fiction of royal supremacy is not without value. In the public imagination it has a unifying, dignifying, and stabilizing influence. Englishmen agree that it exerts a psychological influence in moderating the bitterness of partisan feeling. For after all it is His Majesty's government that is ruling the country—not a Conservative government or a Liberal government or a Labor government. And it is His Majesty's loyal opposition that sits on

IS THERE A  
DIFFERENCE

THE CROWN  
IS A PART OF  
PARLIAMENT

THIS IS  
STRIPPED OF  
THE NOMEN-  
CLATURE OF  
GOVERNMENT

the other side of the House. It is allegiance to His Majesty that binds all British subjects together. It is His Majesty who forms the focus of all British national power and pride. Phrases and symbols have a more subtle and far reaching influence on government than we sometimes suspect.

Down to the close of Charles I's unhappy reign it was contended by the monarchists that the king had inherent legislative power

that he possessed the right to issue decrees without the concurrence of parliament. These enactments were known as ordinances. But the right to issue ordinances has long since been lost. Orders-in-council are still issued by the crown but such orders do not, for the most part, have any legal force unless authorized by some act of parliament.

So it is with the enactment of statutes. Ostensibly they are the handiwork of the king in parliament. This is indicated by the wording of the preamble which is affixed to every act of parliament to wit that the statute is enacted by the king's most Excellent Majesty by and with the advice and consent of the Lords Spiritual and Temporal and Commons in this present parliament assembled and by the authority of the same. No act of parliament therefore, can go into force without the assent of the crown. But this assent is never denied. It is always given as a matter of course.

The crown takes the initiative in summoning parliament, subject to the requirement that the summons must be given at least once a year. There is no law which requires parliament to be brought together once a year but if it were not so summoned certain annual acts would expire. This would leave the nation without army regulations without revenue from the income tax, without appropriations to carry on the government and other wise in a predicament. The crown also prorogues parliament at the end of each session and dissolves it when the time comes for a general election. When a new parliament meets it is usually greeted by the monarch in a speech from the throne.

When a statute is enacted by the House of Commons alone under authority of the Parliament Act of 1911 the reference to the advice and consent of the Lord Spiritual and Temporal is omitted.

But the king as an individual has no discretion in the performance of these functions. The ministers determine when parliament shall be called together when it shall be prorogued and when dissolved. Even the speech from the throne is written by the prime minister and put into the monarch's hands to be read. It expresses the views and opinions of the cabinet not those of the king. Having delivered his speech from the throne the king withdraws and does not again appear in parliament during the rest of its session. In the early stages of parliamentary development the kings of England actually presided at the sessions but for more than two hundred years no monarch has attended a meeting of parliament except on the opening and closing days and not always even then.

THE FIG  
TION AND  
THE ACTS ✓

When measures have been passed by parliament they are laid before the king for his assent. This royal assent may be given by him in person or he may authorize certain commissioners to declare and notify his royal assent for him. That is what he usually does nowadays. The assent is not given by signing the measures as is done by the President of the United States. The practice is for an official known as the clerk of the crown to read out the titles of the bills which have been passed whereupon another official known as the clerk of the parliaments solemnly pronounces a phrase in the old French of Plantagenet days while the lords commissioners look on in silence.

27 AS  
TO LAWS

Ordinary public bills are assented to with the words *Le Roy le veult*. Appropriation bills receive the benediction *Le Roy remercie ses bon sujets accepte leur benevolence et ainsi le veult*. Private bills are assented to with the declaration *Soit fait comme il est desire*. In the old days when the king decided to withhold his assent from a bill he merely promised (like a modern politician) that *Le Roy s'en va*. The monarch or clerk of the parliaments erected a measure with these procrastinating words.

THE KING  
LIES

The whole procedure is quaint and characteristically English. From time to time an official known as the clerk of the crown makes

Som writ is raised the question whether he is bound to dissolve parliament in the matter of the first coming the ministry having the confidence of the House of Commons to carry on.

a list of the bills which have passed both Houses. This list gives the title of each bill only. Then the king issues a document bearing the royal sign manual and the great seal of the realm, which authorizes a commission of five persons to go through the form of assenting to these bills on His Majesty's behalf. These commissioners are almost always peers, and the lord chancellor is one of them.

In due course these five peers put on scarlet robes trimmed with ermine, and seat themselves on a bench immediately beneath the gilded throne in the House of Lords,—the lord chancellor in the center and his four colleagues flanking him, two on either side. When all is in readiness the lord chancellor announces that His Majesty has been pleased to issue a commission to several lords therein named for declaring his royal assent to several acts agreed upon by both Houses of Parliament. Thereupon the resplendent official messenger of the House of Lords, known as the Gentleman Usher of the Black Rod, struts out of the red chamber and across the corridor to the House of Commons, where he knocks on the door and, being admitted to the House, announces that the lords commissioners desire the attendance of the Commons in the other chamber.

With the speaker and the sergeant at arms leading the way, the faithful commoners (usually only a few of them) troop across to the House of Lords and line up in the rear part of the chamber where they remain standing. The speaker bows gravely to the lords commissioners on their bench, whereupon the latter all raise their cocked hats. The clerk of the Lords then reads the royal letters patent appointing the commissioners. Each commissioner doffs his hat once more at the mention of his name and title. When the reading of the document is finished, the clerk of the crown and the clerk of the parliament take their places on either side of the table. The former reads the title of each bill and the latter pronounces after each the Norman French formula, as has been explained. School Teachers Superannuation Act, says one clerk. *Le Roy le veult*, gravely replies the other, as he bows low to the lords commissioners. Manchester Gasworks Extension Act, recites the first clerk. *Soit fait comme il est desire* is the reply in this instance—the measure being a private bill.

So the royal assent is now a picturesque formality and nothing

more The king does not even read the measures <sup>1</sup> Why should he? He assumes no responsibility for them It is enough that they have been passed by both Houses of Parliament They would not have been so passed if the king's ministers had opposed them So it is the ministers who have the responsibility It is they who form the target if anyone has criticism to offer

A MERE  
FORMALITY

What would happen if some headstrong king should decline against the advice of his ministers to give the royal assent to a bill passed by parliament? That is not a hard question to answer In such a highly improbable contingency the ministry would at once resign It could not continue in office with a king refusing to give it his confidence Then the king presumably would summon a new prime minister and ask him to form a cabinet But the House of Commons would refuse to support the new prime minister otherwise it would be taking the king's side against itself So there would be nothing to do but to dissolve the House and leave the issue to the people That would be a dangerous step for any king to take because an adverse decision at the polls would inevitably suggest his abdication

WHY THE  
ROYAL ASSENT  
TO A BILL  
NOT  
WORTH  
HEED

There is not much likelihood that any British king will ever press the issue to such a perilous point On no occasion during the past hundred years has a monarch ever even hesitated in the matter of giving the royal assent to bills passed by parliament So the royal veto is obsolete and the probability is that it will never be revived The statement is sometimes made by way of giving a realistic touch to the situation that if parliament were to send the king his own death warrant he would be under the necessity of giving his assent to it But parliament has long since ceased to enact death warrants or bills of attainder either for the king or for anyone else

THE LONG  
ESTABLISHED  
PRECEDENT

Back in the days of Charles II one of his courtiers after an evening

Gave George III a letter in which he said that he found the task too great. It is the prime minister's duty to inform the king generally of the general purport of all important legislative proposals that are presented to parliament in this way the monarch is enabled to keep himself sufficiently posted with out reading the measures

There is possibility of our thinking that British monarchs might request the withdrawal of the royal assent to a bill passed by parliament on some matter of great concern to them—such as imperial defence That would put the king in a position to revert to his original position

of revelry wrote on the door of the royal bedchamber this little inscription

Here lies our sovereign lord the king  
Whose word no man relies on  
Who never says a foolish thing  
Nor ever does a wise one

To which Charles replied that it was all very true,—inasmuch as his sayings were his own whereas his acts were the acts of his ministers. In the making of laws the king is a participant, but his participation can be neither wise nor foolish, and he assumes no responsibility for it.

Now although the king has lost all formal authority in relation to the making of laws he is by no means without influence in this field of government. As a matter of courtesy fortified by usage he is always kept informed concerning the measures which his ministers propose to lay before parliament. It is not customary to bother the king with matters of routine or detail but when important measures are being considered by the cabinet it is the duty of the prime minister to ascertain the monarch's opinion if he has any. The royal opinion may be given much or little weight depending upon the grounds for it but the will of the ministers must prevail if they insist. A great deal depends of course upon the ability and personal force of the monarch. Something also hinges upon the relations between him and his prime minister. These may be intimate and cordial or they may be of a reserved and strictly official character.

Queen Victoria for example was on very friendly terms with Disraeli who consulted her on all the high spots of governmental policy but she disliked Gladstone partly because he bothered her with details and often blurted out untactful things. Disraeli was once asked the secret of his ability to get along so amicably with his headstrong sovereign. I never deny he said I never contradict—and I sometimes forget. Victoria herself is said to have explained her favoritism by remarking that Disraeli treats me like a woman while Gladstone talks to me as though I were a public meeting.<sup>1</sup>

<sup>1</sup> For a full discussion of these relations see Philip Guedalla *The Queen and Mr Gladstone 1845-1879* (London 1933) J. A. R. Marryat *Queen Victoria and Her Minister* (London 1933) and F. Hard *The Political Career of Queen Victoria 1801-1901* (London 1935).

THE ABSENCE  
OF ROYAL  
AUTHORITY  
DOES NOT  
IMPLY THE  
ABSENCE OF  
ROYAL IN-  
FLUENCE.

VICTORIA AND  
HER TWO  
GREAT MIN-  
ISTERS.

Her son Edward VII was a man of the world a good politician and a better diplomat. If he ever had a difference of opinion with his ministers he kept it to himself. Her grandson George V managed to maintain cordial relations with prime ministers of such widely varying types as Baldwin Lloyd George and Ramsay MacDonald and was freely consulted by them all. Edward VIII during his reign of less than a year did not have much chance to stamp the impress of his personality upon the course of British government, but there is reason to believe that his own views did not always coincide with those of his ministers. To what extent the personal opinions of a British king are influential with his ministers or are disregarded by them, there is no way of knowing. Interchanges of opinion between the two are in the highest degree confidential on both sides.<sup>1</sup> The present monarch, George VI has not been on the throne long enough to permit any forecasting of his probable influence upon British policy.

The crown is not only a participant in lawmaking but the titular chief executive as well. All executive authority of whatever character is exercised in its name. It is the function of the crown for example to see that the laws are observed and enforced. To this end all the higher executive and administrative officers of the realm (with a few exceptions of slight importance) are commissioned in its name. With some exceptions also the crown has the right to suspend or dismiss these officials. Thus it controls the entire personnel of civil administration. Similarly it is commander-in-chief of the army the navy and the air force—as is the chief executive in all other countries including the United States. War can be declared and peace concluded by the British crown without consulting parliament. But the money needed for carrying on a war can only be had by parliamentary action.

The crown conducts the foreign relations of Great Britain sending instructions to the ambassadors and ministers of His Britannic Majesty as they are called. The crown is also the treaty-making authority and all international agreements are made in its name. Treaties can be drawn ratified and put into operation without parliament.

The general extent of ministerial influence upon governmental policy is discussed throughout *A. J. A. Farrer The Monarch in Politics* (New York 1917).

This does not mean of course that the commission of every civil military and naval officer is actually signed by the king. Much less does it mean that the appointees are selected by him.

mentary concurrence provided of course that they do not stipulate for the cession of territory or the payment of money or for something else that requires parliamentary action to make them effective. It will be observed therefore that the British crown possesses all the executive powers that are vested in the President of the United States and more besides. Sir Sidney Low has remarked that the British crown is merely a convenient working hypothesis but in its constitutional sense it would seem to be a good deal more than that. A government cannot be conducted by hypothesis. The crown is an institution that governs the United Kingdom with the approval of the House of Commons.

Now this is merely a figurative way of saying that the prime minister and his cabinet govern the country. It is they who direct every action of the crown. The prime minister of Great Britain is the real chief executive working under cover of an ancient mask. He and the other ministers see that the laws are carried into effect. They spend the money that parliament appropriates. They decide who shall be appointed to office. They direct British foreign policy and make treaties. They even decide issues of war and peace. When Great Britain declared war against Germany in 1914 it was the ministers acting in the name of the crown who threw the British empire into the great conflict. But no cabinet would ever take so momentous a step unless it felt certain that parliament would approve its action.

The ministers therefore and not the king are the custodians of the powers of the crown. The completeness of this control is shown by the fact that it extends (with a few exceptions) even to the selection of the king's personal staff. The king's private secretary is his own choice and does not change with the advent of a new ministry. He is a very useful channel of communication between the king and the cabinet on confidential matters.

But the other high officers of the royal household are in most cases appointed with the approval of the cabinet and change when the ministry changes. This might seem to be carrying the ministry's guardianship to an absurdity and Queen Victoria once raised a fuss about it.<sup>1</sup> But it is a wise custom because various

ALL THE POWERS OF THE CROWN ARE PUT INTO ACTION BY THE PRIME MINISTER AND HIS CO-LEAGUES.

THE COMPLETENESS OF THE CABINET'S CONTROL AS ILLUSTRATED BY THE APPOINTING POWER

<sup>1</sup> In 1839 Sir Robert Peel was asked by Queen Victoria to form a ministry. Before doing so he requested an assurance that certain high-titled ladies in



episodes in English history point to the desirability of making sure that those who are in immediate attendance on the king or queen shall not be hostile to the ministry in power<sup>1</sup>

So when parliament confers authority on the crown it does no more than delegate power to one of its own committees for the cabinet is the great standing committee of the Lords and Commons. It is customary for parliament to provide from time to time that various things may be done by orders-in-council that is by the privy council in the name of the crown. This is merely a roundabout way of giving power to the ministers. To the king as an individual parliament never grants any authority. To do so would be out of keeping with the whole spirit of the British constitution.

WHY PARLIA-  
MENT SO  
READILY E-  
STOWS POW-  
ERS ON THE  
CROWN

It is often said that the king is the fountain of justice and hence Englishmen are fond of this expression but it is entirely figurative, a survival from the old far-off forgotten days when the king actually intervened to set aside the decisions of the courts and when the king's conscience spoke the last word in judicial administration. Today neither the king nor the crown is a fountain of justice save in one respect, namely in the case of those issues which come before the judicial committee of the privy council. There as will be seen later the crown still functions as a court of last resort<sup>2</sup>. But the crown cannot of itself establish any new court, or change the jurisdiction or procedure of any existing court, or alter the number of the judges or the mode of their appointment, or the tenure of their office. It is true that the judges of the regular courts are appointed by the crown but it has no control over their actions during good behavior. It is also true that the crown has the prerogative of pardon but this is not a judicial power it is of the nature of an executive interference with the penalties that follow conviction.

THE CROWN  
AND THE  
"FOUNTAIN  
OF JUSTICE"

the queen's household (known as the Ladies of the Bedchamber) should be placed by others who were in sympathy with Peel's party. The queen declined to agree and Peel thereupon refused to accept the post of prime minister. Some what later the queen modified her objections whereupon a compromise was arranged and Peel took office.

Particularly in the reign of Queen Ann when Sarah, Duchess of Marlborough used her position as Mistress of the Robes to influence the queen's attitudes and actions on various political questions. To such a degree was this influence exerted that the then-current phrasem, "Ann reigns but Sarah governs" had a good deal of truth in it.

The expression fountain of honor also goes back to the time when the monarch at his own discretion had the right to create new peers to bestow baronetcies knight-hoods and other honors and even to grant pensions Henry VIII confiscated most of the estates held by the monasteries and with these lands endowed many new families The Stuart kings made peers of their personal favorites But the king's personal preference no longer controls the making of peers Public honors are still bestowed by His Majesty but on the advice of his ministers On appropriate occasions each year a list of peerages and other honors is announced This list has been prepared by the prime minister and it may contain the names of persons who are utterly unknown to the king It may even include the names of some who are personally obnoxious to him There is at times a truly Pickwickian ring to the official announcement that His Majesty has been graciously pleased to confer a peerage upon some hardened old blasphemer of royalty The prime minister however is mindful of the king's sensibilities in making up the list As a matter of courtesy he may add a name or strike off a name at the monarch's request But such action must in all cases be governed by the fact that the prime minister not the king is responsible to parliament for inclusions or exclusions If the list of honors is open to criticism it is he and not His Majesty who must bear the brunt of it<sup>1</sup>

Since the Act of Supremacy was passed about four hundred years ago the headship of the Church of England has been vested in the crown The crown accordingly appoints the archbishops bishops and other ecclesiastical dignitaries In its advice concerning these ecclesiastical selections, however the cabinet usually gives deference to usage in promoting clergymen from lower appointments to higher but there is no obligation to do this The advisers of the crown have a free hand in the matter Prior to 1919 parliament was the legislative organ of the Established Church but in that year it enacted the Church of England Assembly (Powers) Act which enables the national assembly of the Church of England not a statutory body to pass measures

<sup>1</sup> On rare occasions the monarch has conferred a peerage on someone without consulting his ministers—as in the case of The Rt Hon Herbert H Asquith who became Earl of Oxford and Asquith But these have been cases where the use of the circumstances and a special approval could be taken for granted.

which under certain limitations can be presented for the royal assent if a resolution to that effect is passed by both Houses of Parliament. Such measures may relate to any matter concerning the Church of England and may actually repeal an act of parliament. This represents a very remarkable development in English lawmaking, a step in the direction of legislative devolution. The crown as head of the Established Church is also vested with final authority in certain matters of ecclesiastical discipline, but it has been provided by statute that such controversies shall be heard and determined by the judicial committee of the privy council.

### THE JUSTIFICATION OF MONARCHY

English history abounds in paradoxes, and not least striking among them is the paradox that the crown grows stronger as democracy spreads. The powers of the *king* have dwindled to insignificance, but the strength of the *crown* has become steadily greater during the past hundred years. Now the question naturally arises: If the authority of the crown is no longer exercised by the king, why retain the kingship at all? Why not let the prime minister assume in name, as in fact, the executive headship of the nation? What good purpose is served by continuing to use fiction and figures of speech which have long since ceased to square with the realities? Why keep the ministry at work behind a mask? Would it not be better to abolish the institution of royalty and save the hundreds of thousand pounds per annum that it costs the taxpayers of Great Britain?

A satisfactory answer to this question would be neither short nor simple. Nor would it carry much conviction to the minds of those who do not understand the traditional conservatism of the British temperament or the actual workings of parliamentary government under the party system. Motives of sentiment count for a good deal in the British commonwealth of nations. No country is disposed to throw overboard without considerable provocation an institution which it has maintained for over a thousand years. Governments long established should not be changed for light or transient reasons, to use Jefferson's words. But sentiment is not the only thing that keeps monarchy in the saddle. There are practical considerations as well.

The first and doubtless the strongest practical reason for the

continuance of the kingship is the fact that if it were abolished something would have to be put into its place. It would be necessary to appoint, or to elect, or in some other way to secure a titular head of the nation. The prime minister is not the titular chief executive in any country.<sup>1</sup> It is impossible to conceive of a stable parliamentary government without there being at its head someone whose tenure of office is beyond the fickleness of a parliament or a congress. This tenure must be long enough to assure stability—be it four years as in America, seven as in France, or for life as in Britain. If the British monarchy were abolished and a republic set up, it would be necessary to provide for a Lord Protector or a President, or some other functionary chosen either by parliament as in France, or by the people as in America.

The question would then arise: What powers should this titular executive possess? If he were given a large measure of independent authority as in the United States, it would necessarily be at the expense of powers now possessed by the cabinet and through it by parliament. In other words there would be an end to the supremacy of the House of Commons. If on the other hand the new chief executive were given no substantial power or as little as is possessed by the President of the French Republic, he would be only perpetuating the kingship under a new name. And there would be the constant danger that this elective head of the state, although endowed with no real power, would strive by devious means to obtain it. He would be under constant temptation to do what President Millerand did in France some years ago—with similar results.<sup>2</sup> When the titular chief executive has no real power there is a good deal to be said for keeping the post hereditary.

Englishmen have grown accustomed to the direct and continuous control of the House of Commons over the executive branch of the government. They have never looked with favor on the doctrine that one branch should serve as a check upon the other. There is no likelihood that they would consent to the establishment of an independent presidential executive on the American model. The only alternative is an execu-

<sup>1</sup> Germany is perhaps an exception, for the office of chancellor is there combined with the titular headship of the Reich.

<sup>2</sup> See Chapter XXIII.

SOME PRACTICAL REASONS.

AN AMERICAN OR A FREE CHIEF PRESIDENT?

NEITHER TYPE WOULD DO

tive like the President of the French Republic who neither reigns nor governs. That to the mind of the average Englishman would be no improvement upon what he already has.

The British king has parted with his powers or holds them in abeyance as some prefer to say but this does not mean that he performs no useful service. The whole executive authority returns temporarily to his hands whenever a cabinet resigns. During the brief interval between the resignation of one prime minister and the installation of another the king is the sole depositary of executive power. He is the one personage in the realm who stands aloof from partisan strife and can be depended on to act impartially. He is the umpire who sees that the great game of politics is played according to the rules. The king is sometimes moreover when a wise king can assume in the public interest the role of peacemaker between warring political factions whose hostility is working injury to the country as a whole. There can be no doubt that the influence of George V was helpfully directed towards the settlement of the Irish question.<sup>1</sup>

THE ROYAL  
SERVICES  
WHICH THE  
MONARCH  
PERFORMS

SOME EXAM-  
PLES

In diplomacy too the king may at times render a signal service to the nation. Edward VII gave a notable illustration of this. When he came to the throne his country was without a friend in Europe. It was his desire to establish an *entente* with France a desire which had the cordial support of his ministers. Within a few years by a combination of persistence and tact he considerably assisted the government in achieving this aim. A king can do some things which if done directly by his ministers would have motives of party politics attributed to them.<sup>2</sup>

Finally the king supplies the vital element of personality and picturesque interest in government. The average man does not easily get hold of abstractions. Sovereignty ministerial responsibility powers of the crown and such things mean little to him. But anyone can visualize a king on the throne. This is particularly important in a far flung empire which includes white black brown red and yellow men on five continents. Tell a Dyak in Borneo a Sikh in India or a big black

A SYMBOL OF  
THE  
NATION

<sup>1</sup> See the documents printed in F. M. Saut and D. P. Barrows, *British Political Transition* (Yonkers N. Y. 1925) Chap.

<sup>2</sup> See the discussion of this subject in M. H. M. Donagh, *The English King* (London 1929) pp. 230-234.

bounding beggar in the Egyptian Sudan that he must give allegiance to the concept of imperial unity and he will get as far with the idea as he would with Einstein's proof of the finitude of space. But when you talk to him of a king who wears a crown sits on a golden throne and asks the allegiance of four hundred million people he is more likely to get the picture

Moreover the king supplies the one tangible link which holds together all the members of the British commonwealth of nations including Great Britain Northern Ireland India Canada Australia South Africa and the other overseas territories. To the dominions the legislation of the British parliament does not ordinarily extend. They have their own parliaments their own cabinets their own flags and sometimes their own diplomatic representatives at foreign capitals. The one remaining bond among them all is the allegiance to the king and in this sense the monarchy is a symbol of imperial unity. Since the enactment of the Statute of Westminster (1931) which gave virtually complete legislative autonomy to the dominions however the monarch is not believed to be such a clear symbol of imperial solidarity as he was in earlier years.<sup>1</sup> Nevertheless any change in the character of its titular headship would risk a snapping of the strongest tie which now holds a loose jointed British commonwealth of nations together. For it is hard to believe that Canada Australia South Africa and the rest would willingly transfer their homage to a President of the British Republic elected by Englishmen Scotchmen and Welshmen alone.

In every country no matter how democratic it may claim to be there are bound to be ranks and gradations of society. These

gradations may be based upon birth and lineage or upon length of residence in the country or upon wealth or upon political prominence. In Great Britain the many centuries have passed

very largely upon birth and lineage. This being the case it is natural that the headship of British society should belong to the monarch. The king the queen and the members of the royal family are in a position if they choose to set the social standards of the nation. Whether they have performed this function better or worse than it would have been performed by a social leadership based upon wealth

<sup>1</sup> The somewhat technical reasons for this are explained in A. B. K. in *The Political and Social History of the Commonwealth* (London 1936) pp. 107-116.

or upon popular election is a question upon which outsiders may disagree but on which most Englishmen do not. Social leaders will arise under any form of government and they will exercise a dominant influence not only upon the manners and tastes of the people but upon moral art literature education and benevolence. A royal court when it is minded to set a good example can do it in a very effective way. It can do much for the elevation of the public morality and for the improvement of the social amenities for the advancement of learning and for the enhancement of the national pride.

If the institution of royalty were standing in the way of political liberalism it would be another matter but the abolition of the kingship would not make England any more democratic than she is today because the people already control to the fullest possible extent all branches of their government. On the other hand the abolition of the monarchy would necessitate considerable changes in various branches of life not directly connected with politics. It would leave the Church of England without a titular head it would compel a recasting of the social structure it would sever the strongest formal tie that binds the dominion to the mother country it would substitute an abstraction for a visible symbol as the basis of British allegiance. The saving in expenditure would be inconsequential for the cost of maintaining the kingship is only five or hundredths of one per cent of the total British budget.

The arguments for abolishing the British monarchy are like those put forth in favour of reformed spelling the metric system and an international language like Esperanto they would carry more weight if people were not accustomed to what they have. Englishmen like all other people and perhaps to an even greater extent prefer what they are accustomed to—whether it be in diet recreation or political institutions. With a clean slate to work upon it is improbable that the British people would set up in the twentieth century an hereditary monarchy a House of Lords and an Established Church. But would the people of the United States now create an electoral college as part of the machinery for electing a president or give all the states equal representation in the Senate or let every state make its own decisions? Both countries are disposed to let well enough alone.

NOTHING  
COULD BE  
GAINED BY  
GREAT  
BRITAIN  
ABOLISHING  
THE MONARCHY

THE ORIGIN  
OF HABIT

There are enough urgent problems without turning attention to the endurable anachronisms

The popularity of the kingship among all ranks of the British people has often been commented upon by outsiders. This was impressively demonstrated in the closing days of 1936 when Edward VIII gave up his throne and was succeeded by his brother. From all parts of the United Kingdom, from India, and from the various dominions there came a spontaneous pledge of loyalty to the new monarch even though he had taken his title under circumstances which were unprecedented in the entire history of British government. This demonstration gave renewed proof of the service which the monarchy performs in lending the charm of historic continuity to the political institutions of the British race.

It was not always so. A century ago the royal prestige was at low ebb but it made a notable advance during the long reign of Queen Victoria (1837-1901) and it has been growing ever since. There have been proposals to abolish the House of Lords to reform the cabinet and even to curb the power of the House of Commons but from no source worthy of consideration has there emanated any serious proposal to abolish the monarchy. Seven or eight decades ago there was a republican group in England and it seemed to be gaining ground.<sup>1</sup> Today it has virtually disappeared except for the Communists. Even the leaders of the Labor party although some of them profess to be republicans in principle are agreed that the monarchy must be retained essentially in its present form because there would be great difficulty in getting both Great Britain and the dominions to agree upon anything else. The British people have come to realize that the monarchy seated above the turmoil of personal and partisan strife neutral in politics and with no ambitions to gratify lending dignity to government but not standing athwart the path of the public will—they have come to recognize that whatever may be the causes of their varied troubles the monarch is not one of them. If the crown as has been well said is no longer the motive power of the ship of state it is the spar upon which the sail is bent and as such it is not only a useful but an essential part of the vessel.

POPULARITY  
OF THE ENG  
LISH KING  
SHIP

IT HAS  
GROWN DUR  
ING THE PAST  
HUNDRED  
YEARS



**GENERAL HISTORY** There is no single volume on the development of the British monarchy and it would be impossible to cover the subject except by writing a constitutional history of the realm. On the development of the kingship to the close of the middle ages there is much material in the standard works of Freeman, Stubbs, Ramsay, Haskins, Maitland, Round, Norgate, Green, Tout, Vickers, and Davis—the titles of which may be found in the card catalogue of any good library. The vicissitudes of the monarchy during the Tudor and Stuart periods are narrated in the works of Gardiner, Pollard, Fiske, Innes, Montagu, Trevelyan, and Firth, all of which are well known to every serious student of English history. Lecky and Walpole cover the eighteenth century. For the period 1760–1860 there is an excellent outline in the first volume of May and Holland (see *over* p. 5). R. B. M. and J. D. G. Davies, *A Chronicle of Kingship 1066 to 1937* (London 1937) and C. B. Gham, *The Kings of England 1066–1901* (New York 1929) are good general surveys of the whole period, and Hector Bolitho, *Royal Powers: One Hundred Years of British Monarchy* (London 1937) deals in a sketchy way with the past century.

**POWERS AND FUNCTIONS** The most useful study of the powers and function of the crown at the present time is Sir William R. Anson, *Law and Custom of the Constitution* (4th edition, 2 vols., Oxford 1922–1935). Vol. II, Part I, pp. 1–10, 247–259, but there are excellent chapters on the subject in A. Lawrence Lowell, *The Government of England* (2 vols., New York 1908). Vol. I, chap. in F. A. Ogg, *English Government and Politics* (second edition, New York, 1936), especially chaps. iv–v, and in Sir John A. R. Marritt, *Mechanisms of the Modern State* (2 vols., New York 1927). Vol. II, chaps. xxii–xxiv.

**ROYAL INFLUENCE AND SPECIAL TOPICS** Discussions of considerable value may be found in Michael MacDonagh, *The English King* (London 1929). Sir Sidney Low, *The Government of England* (revised edition, London 1917), chaps. x–xv. A. B. Keith, *The King and the Imperial Crown* (London 1936) and the same author, brief book on *The Privilege and Right of the Crown* (London 1936). R. J. Blackham, *The Crown and the Kingdom* (London 1933). Richard Jebb, *His Britannic Majesty* (London 1935). John Buchan, *The People's King: George V* (Boston 1935) and the books already mentioned on p. 64 (footnotes).

## CHAPTER V

### THE MINISTRY AND THE CABINET

The cabinet lives and acts simply by understanding without a single line of written law or constitution to determine its relation to the monarch or to parliament or to the nation or the relations of its members to one another or to the realm — *W. E. Gladstone*

For more than two centuries the statement of an eminent prime minister which stands at the head of this page was literally true and it gave warrant to his further remark that the British cabinet is the most curious formation in the political world of modern times. But it is no longer true that the cabinet exists without a single line of written law on which to rest itself for the Ministers of the Crown Act (1937) expressly mentions the cabinet and provides a schedule of salaries for its members. Incidentally this act also provides a salary for the leader of the opposition in the House of Commons although he is the principal thorn in the flesh of the cabinet.

Yet Gladstone's characterization remains fundamentally correct. The Act of 1937 says nothing about the functions or responsibilities of the cabinet these rest as before upon the long standing customs of the realm. And it is a remarkable fact that this is so for the cabinet is the most important single piece of mechanism in the whole structure of British government. It is more important today than it ever was. Indeed it has become the pivot upon which the whole machine revolves. Without a knowledge of what this body is and does without an understanding of its functions and responsibilities no one can obtain anything approaching a just picture of the British political system.

#### [HOW THE CABINET AROSE]

Among the governmental institutions of the modern world the British cabinet is perhaps the best example of what usage can build up. The old Curia Regis of Norman times it will be remembered became the progenitor of the privy council, a body which gave advice to the king and helped him with the routine work of admin-

istration Its members were chosen at the discretion of the monarch and although they were often members of the nobility (and hence members of parliament) it was not essential that they should be During the Tudor and Stuart periods the privy council developed into a powerful body and through its various committees conducted almost every branch of the national administration Nothing was exempt from its vigilant supervision Its members moreover were not responsible to parliament but to the king alone The only way in which parliament could reach them was by impeachment and even this method was not always effective for the king could pardon an impeached privy councillor in case of conviction

ITS EARLY  
DEVELOP-  
MENT

So the privy council kept growing in size and expanding its functions With the growth of its membership and the multiplication of its committees the council eventually became so unwieldy that it ceased to be useful as an advisory body Its numerous members could not agree on anything without interminable debates The rank of privy councillor moreover was frequently bestowed by the king as an honorary distinction upon men who rarely or never attended the council's meetings It was natural therefore that the king should adopt the practice of summoning to his private consultation room or cabinet a few selected members of the council who could give him advice without long debates and too much publicity The exact date at which this practice originated is not known it probably began some time before outsiders learned of it In the time of Charles II at any rate the 'cabal' consisted of five members all of whom were noblemen and close friends of the king

A WHEEL  
WITHIN A  
WHEEL

This virtual superseding of the privy council so far as its advisory functions were concerned was not relished by parliament The House of Commons looked upon it as an attempt to introduce a tyrannical and arbitrary way of government The Commons desired to control the royal advisers which it could not do so long as the king chose them without public announcement and conferred with them in secret There remained nevertheless the weapon of impeachment and it was by using this bludgeon that parliament eventually made good its contention that whoever gave the king advice whether in public or in secret should do so at his own peril if the advice turned out to be bad

THE DANGERS  
OF CESSATION  
AND ITS SIGNI-  
FICANCE

This principle was definitely established in 1679 when parliament found a way of removing one of the king's most trusted counsellors despite all that Charles II could do to save him. The adviser in question was Thomas Osborne, Earl of Danby, who held the office of lord treasurer. When the House of Commons proceeded to impeach him, the king dissolved it and ordered a new election. But the new House when it assembled renewed the attack. Danby pleaded that whatever he had done was by order of the king and that the king could do no wrong. But parliament went ahead with the prosecution and sent him to imprisonment in the Tower. By so doing it definitely established the principle that no minister could shelter himself behind the legal immunities of the throne.

Here then was an anomalous situation and one that could not continue. The king had a right to choose his own advisers. No one questioned this right which had existed from time immemorial. It was his prerogative to choose men in whom he had confidence and to entrust them with the routine work of administration, this work to be done in accordance with the royal instructions. But on the other hand parliament had now made good its right to remove by impeachment any royal adviser whom it did not approve. Not only that but it might punish him for having wrongly advised the king, or for having carried out the royal instructions to the detriment of the national welfare. Surely this was a tight place for any minister to be in. If he disobeyed the instructions of the king he would be dismissed from office; if he obeyed them he might be impeached by parliament and sent to prison. No government could function under such an arrangement. Some plan of unified responsibility had to be devised.

The House of Commons had its own ideas as to how this might be done. Many years prior to Danby's dismissal it had offered a solution of the problem by declaring (in the Grand Remonstrance) that the king ought to employ such counsellors only as parliament may have cause to confide in. In other words the responsibility of the king's advisers could be unified by allowing parliament to choose them for him. But Charles I would not listen to this proposal; if he had done so he might have saved both his throne and his head. Nor was it accepted by Cromwell during his term as Lord Protector. Charles II after the

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THE CABINET

restoration of the Stuart monarchy in 1660 also disregarded it and so did James II during his short term on the throne. But the House of Commons continued to urge the proposition at every opportunity and in the end its insistence was rewarded. William and Mary on their accession to the throne in 1688 conformed to the demand and the doctrine that the king's ministers are responsible to parliament has not been seriously disputed since that time.

But let us return for a moment to the privy council. As an advisory body it was gradually supplanted by the cabinet but it did not go out of existence. There were other things for the privy council to do and it remains a part of the British administrative machinery today. It is still a large body with over three hundred members. This membership is made up in considerable part of men who have served or are serving in the cabinet. If anyone becomes a cabinet minister he is at once made a privy councillor. When he gives up his office as minister he remains a privy councillor for life. In addition many others who have attained eminence in political life or as judges or in the civil service or in art literature law or science or in the government of the colonies are made privy councillors by the crown as a mark of honor. This gives them the title of Right Honorable.

MEANS  
THE PRIVY  
COUNCIL  
CONTINUED

The whole membership of the privy council is never called together to transact business. Plenary sessions are called only on the occasion of some important ceremony such as the coronation of a new sovereign. On the other hand meetings of the privy council are frequently held sometimes a couple of times a month. Three or four members of the cabinet including the Lord president and the clerk of the council come together (usually at Buckingham Palace) and act in the name of the whole membership. The king often attends although his presence is not essential. The business consists mainly of adopting orders-in-council which the cabinet has already agreed upon. The privy council also maintains certain committees the most notable of which is its judicial committee.

ITS PRESENT  
FUNCTIONS

The cabinet replaced the privy council in its advisory functions two hundred and fifty years ago but the method of ensuring the effectiveness of parliamentary control over the cabinet was still to be

worked out Prior to the Revolution of 1688 the kings had chosen their advisers from among their own intimate friends and supporters. The new monarchs began the innovation of selecting their advisers from both the major party groups in parliament. In this they intended well their aim being to give both Whigs and Tories an equal measure of recognition.

But this plan worked badly as anyone might have predicted. Ministers drawn from two opposing political parties could not work together and the friction grew more pronounced as party lines became more plainly drawn. The cabinet proved to be a house divided against itself; it could not give unanimous advice; one faction had the confidence of a majority in parliament while the other did not. As the only way out of the difficulty it was decided to choose all the ministers from the majority party, which happened at this time to be the Whigs. The cabinet of 1697, popularly known as Sunderland's *Junto*, was the first British ministry constituted on the principle that all its members should possess the confidence of the dominant party in parliament. The new practice was generally followed by Queen Anne even to the extent of having Whig ministers when her own personal sympathies were with the Tories.

Of course it takes time to establish a custom of the constitution and even at the close of Anne's reign the principle of ministerial solidarity was not beyond the possibility of an overthrow. It is entirely possible indeed it is probable that if Anne had been succeeded by an ambitious and firm-willed king the bipartisan cabinet system would have been restored. As it turned out however the situation became favorable for continuing the practice which William and Anne had begun.

George I, who succeeded Anne, was a dull-witted Hanoverian who knew nothing of English political traditions. He neither spoke nor understood the English language. The details of British domestic policy did not interest him in any way. Accordingly he abstained from presiding at meetings of his cabinet and gave this function to one of its members, Sir Robert Walpole, who thus became the first prime minister in the modern sense. There had been chief ministers of the king long before Walpole's day—Wolsey and Thomas Cromwell under Henry VIII, Burleigh under Elizabeth, Strafford under Charles I, and Clarendon under Charles II. But these chief ministers did not

HO V PARTY  
SOLIDARITY  
CAME INTO  
THE CABINET

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V AL O E

hold their posts by virtue of their being the recognized leaders of the dominant party in parliament )

Walpole was the first royal adviser to preside at cabinet meetings and at the same time serve as the leader of the House of Commons. He was besides a statesman of great competence and sagacity. For twenty years while he held the confidence of a majority in the House of Commons George I and George II let him govern the realm. To keep a majority on his side Walpole resorted to methods which would now be regarded as crooked, but it can at least be said that he never tried to hold his post without a parliamentary majority back of him. When in spite of his skill and corruption he failed to command a majority (1742), he resigned at once and this notwithstanding the fact that he still retained the full confidence of the king.)

During his long lease of power Walpole moulded the cabinet system into the form which it retains today. He established the principle that the king, having chosen a prime minister, should leave to this minister the selection of the other ministers. He made himself the sole medium of communication on all important matters between the ministry and the monarch. Accepting the doctrine that the cabinet must at all times command the support of a majority in the House of Commons, he insisted that he in turn was entitled to his party's support. He demanded and enforced his demand that every Whig member of the House should stand behind the cabinet on every issue. The development of the cabinet and of the party system were thus made to proceed hand in hand. George III when he came to the throne in 1760 made a spirited attempt to revive the personal influence of the monarch upon the course of national policy but failed.

Since the close of the eighteenth century the outlines of the British cabinet system have remained substantially unchanged (but its various features have become clarified by a series of precedents). It has become an established rule for example that when a prime minister resigns the entire cabinet must go out of office with him, in other words that the cabinet's responsibility is collective.<sup>1</sup> It has become settled as will be explained a little later that members of the cabinet are not only responsible to the king and to parliament but also to one

EMERGENCE  
OF THE CABINET  
SYSTEM INTO ITS  
PRESENT FORM.

THE SYSTEM  
CONTINUES  
TO EVOLVE

another. With the steady development of the party system, moreover the functions of the cabinet in the matter of framing the party program and transforming party pledges into laws have been given emphasis. The whole system has been shaking itself down to a stable basis but it has done this slowly because it rests upon usage. Nor is there any reason to think that this evolution of the cabinet system has yet come to an end. It is still developing new features and through future generations will doubtless keep on doing so.

Walpole's cabinet consisted of from seven to ten active members. But as the functions of national administration widened each succeeding cabinet tended to grow larger until the membership at the close of the nineteenth century was more than twenty. Meanwhile some thirty or more additional ministers were given administrative posts although they were not members of the cabinet. In piping times of peace it was possible to do business with twenty members sitting around the cabinet table but when the strain of the World War came upon Great Britain the size of the cabinet proved to be a hindrance to the prompt reaching of conclusions. As Lloyd George said: "You can't wage war with a Sanhedrin."

In 1916 therefore, a war cabinet of five (later six) members was created within the regular cabinet circle and this smaller body was given full control of Britain's war program. Of the six members only one (the chancellor of the exchequer) had any administrative duties. The rest of the directors including the prime minister were left free to give their energies to the prosecution of the war.<sup>1</sup> The plan fully justified itself and the suggestion was made that the size of the cabinet should be permanently fixed at ten or twelve members. But nothing came of this proposal. In 1919 the old cabinet structure of about twenty members was quietly restored and it has since remained.

#### ORGANIZATION AND FUNCTIONS

HOW ITS  
MEMBERS ARE  
CHOSEN

How is the cabinet organized and what are its functions at the present time? Before entering upon such a discussion it may be well to define with some precision certain terms which Englishmen use in describing the ex-

For a further discussion see John A. Fairlie, *British War Administration* (Oxford 1919).

In the *Report of the Machinery of Government Committee of the Ministry of Reconstruction* (1918) commonly known as the Haldane Report.



ecutive branch of their government. These terms are privy council, ministry, cabinet, and the government. In theory

the privy council still controls the actions of the crown. Acts of the crown are declared to be by and with the consent of the privy council. This is because the

SOME PRELIMINARY EXPLANATIONS  
PRIVY COUNCIL AND  
CABINET

cabinet until very recently has not been recognized

by the constitution or the laws. Hence no one is ever officially appointed to membership in the cabinet. He is appointed a privy councillor and then summoned to cabinet meetings. The cabinet therefore

may be defined as a body of some twenty privy councillors who have been chosen by the prime minister to assist him in his functions.

Another distinction is somewhat confusing to the outsider, namely the distinction between the ministry and the cabinet, between

ministers and cabinet ministers. All members of parliament who hold important administrative posts

MINISTERS  
AND CABINET  
MINISTERS

of a political character, and who give up such positions when a cabinet resigns, are known as ministers. In other words

the ministers are the high officials of the crown who hold office subject to the continued confidence of a majority in the House of Commons. There are more than fifty ministers but only about twenty cabinet ministers. The ministry does not meet as a body for the transaction of business. It has no collective functions. It is only the cabinet ministers who meet.

The duties of a minister (unless he is a cabinet minister) are individual duties only. He may be the head of a minor department (the heads of most major departments are in the cabinet) or more often he is an aide to a major

AN ANALOGY

department head that is an undersecretary or a parliamentary secretary. Certain ministers also serve as whips of the majority party in the House of Commons.

So the broad distinction between ministers and cabinet ministers in Great Britain may be illuminated for American readers perhaps by reference to the government of the United States where the President on coming into office appoints a considerable number of higher administrative officials who ordinarily go out of office when his term expires. These include not only the ten members of the

The postmaster-general and the attorney-general for example are ministers but not members of the cabinet.

The function of the parliamentary whips are explained below. Chapter XIII

President's cabinet who are heads of departments but a much larger number of assistant secretaries in the state war navy treasury and other departments together with heads of various boards and commissions. In the United States there is no term that accurately designates this entire body of cabinet members plus other high officials but the group corresponds roughly to what Englishmen call the ministry.

The cabinet is the smallest of the three groups and the only one that has a collective responsibility. It is composed of those ministers whom the prime minister designates to membership in his cabinet, but the prime minister in making his designations is guided largely by precedent. Some high ministerial posts are always of cabinet rank (for example the headship of the foreign office the home office the war office and so on) while some less important ones invariably are not. There are a few which may or may not be of cabinet status as the prime minister decides. For he is head of both ministry and cabinet.

Finally there is the government a term which Englishmen use in a sense unfamiliar to outsiders. When they speak of a change in the government or a change of government for example they do not mean a change in the form of government. When they say that the government is likely to fall they do not mean that the monarchical system is about to be supplanted by something else. By the government they mean the executive authorities who are in control for the time being—namely the prime minister and his ministerial colleagues. It is they who are responsible for the passage of government measures by parliament. The term most nearly analogous in America is the administration which is somewhat loosely used to include the President the members of his cabinet their assistants and all others who would go out of office with a change in the presidency.

The prime minister as has been said is head of the ministry the cabinet, and the government. The king goes through the gesture of selecting this official but he has very little discretion in making the choice. He summons and by usage must appoint the leader of that political party which controls a majority in the House of Commons. If no single party controls a majority he calls upon some leader who can form a coalition or otherwise assure

A DEFINITION  
OF THE CABINET

THE MINISTERS AND  
THE GOVERNMENT

THE PRIME  
MINISTER

HOW HE IS  
CHOSEN

himself of a majority on important measures. Under the two-party system which prevailed in England for many generations the king's task was very simple. When a prime minister resigned by reason of a defeat at the polls or on the floor of the House the monarch merely sent for the leader of the victors and invited him to assume office.

But when three political parties are represented in the House with no one of them controlling a majority the royal function is not so simple. The king must then use his own judgment as to which leader he will summon. The main thing is that whoever takes office as prime minister shall be able to command a majority. If he can do this from within the ranks of his own party so much the better. If he cannot then he must secure it by some coalition, compromise or understanding with one of the other parties. When Mr Ramsay MacDonald was invited to become prime minister in 1928 the Labor party did not control a majority in the House. But before taking office he satisfied himself that a sufficient number of Liberals would support him as against the Conservatives and thus enable him to carry on the government.

In any event the prime minister is always chosen from among the two party leaders or the three party leaders as the case may be. It is inconceivable that anyone other than a recognized leader would be called upon. In 1922 when Mr Lloyd George tendered his resignation there was <sup>HE IS ALWAYS</sup> A PARTY LEADER no recognized leadership in the ranks of the Conservatives. The king sent for Mr Bonar Law who agreed to accept the post of prime minister in case the Conservative party should formally designate him as its leader which it did. Again in 1923 the king sent for Stanley Baldwin on Bonar Law's retirement and offered him the post of prime minister but only after having consulted with prominent members of the party and making sure that the choice would be acceptable. Each political party determines for itself the methods by which its own leader is chosen. Ordinarily however the selection is made by a caucus which is attended by the party's membership in the House of Commons along with various other prominent party workers.

During the two hundred and sixteen years 1722-1938 Great Britain had forty prime ministers. This is in sharp contrast with the experience of France which has had a larger number of prime ministers in one quarter of the time. These forty prime ministers of

Great Britain from Sir Robert Walpole to Neville Chamberlain headed fifty eight cabinets <sup>1</sup> Thirteen British premiers held the office twice two of them three times and one (Gladstone) was prime minister four times Thus each English ministry has remained in power for less than four years on the whole and the forty prime ministers have averaged less than six years in office

While any British subject is eligible to the premiership it is significant that twenty eight of the forty were Englishmen by birth Six

**BIRTH AND EDUCATION** were Scotchmen three Irishmen one a Welshman one a Canadian and one (Disraeli) was of foreign extraction but of English birth Twenty five were peers or sons of peers and all except three or four were men of considerable wealth It is worth remarking that thirty three out of the forty were university graduates—almost all of them from Oxford or Cambridge This is striking evidence of the prominent part which the two oldest universities of England have taken in the public life of the nation

Nearly all the prime ministers went into public life at an early age eleven became members of parliament at twenty one and the average for the entire list is about twenty five No such precocity in politics has been shown by the presidents of the United States The average age for becoming prime minister however is about fifty which indicates that the office has demanded a considerable apprenticeship There have been notable exceptions of course as in the case of the two Pitts but for the most part the younger politicians have had to bide their time As for their party affiliations twenty one prime ministers were Whigs or Liberals while only seventeen were Tories, Conservatives or Unionists One premier the Duke of Portland happens to fall in both categories for he held office twice first as a Whig and later as a Tory And Britain has had one prime minister from the Labor party

Very few British prime ministers have had any vocation but politics One was a soldier one a captain of industry and several were practicing barristers But not all of these were dependent upon their own earnings for a livelihood Some had long political ca

<sup>1</sup> Most of the data upon which this and the next two paragraphs are based has been taken from the Hon. C. V. Bingham's volume on *The Prime Ministers of Britain* (New York, 1922)

reers The Duke of Newcastle for example was continuously in one office or another for forty six years while Lord Palmerston was on the public payroll for forty seven Gladstone was alternately in and out of office during more than half a century Tenure of the prime ministership does not seem to have cut men's lives short for their average longevity (omitting those still living) exactly coincides with the Psalmist's span of three score and ten Six of them attained the age of eighty

VOCATIONS  
AND LENGTH  
OF SERVICE

More than forty years ago Mr James Bryce (afterwards Lord Bryce) wrote an illuminating chapter on Why great men are not chosen Presidents In it he propounded the query why the chief executive office in the United States had not been more often filled by great and striking men He pointed out that among the twenty one presidents who had held this office during the century following the inauguration of Washington only a half dozen or so were statesmen of great or striking merit Washington Jefferson Madison Jackson Lincoln Grant and Cleveland were about the only chief executives of the United States who could properly be rated in 1888 as statesmen of the first rank It is a fair assertion that more than half the presidents during the first century of the Republic were men who would now be entirely forgotten were it not for the fact that they once held the highest office in the gift of the American people

PRIME MIN-  
ISTERS AND  
PRESIDENTS  
COMPARED

But the presidency of the United States has not been unique in its frequent appeal to mediocrity On the roll of the English prime ministers one can also find a fair proportion of second rate statesmen Among the various prime ministers from Walpole to Chamberlain there are hardly more than half a dozen who meet the standard which Lord Bryce set up in relation to the American presidency Walpole the two Pitts Peel Palmerston Disraeli and Gladstone exhaust the list Possibly Canning Salisbury and MacDonald might be added But North Newcastle Grenville Rockingham, Liverpool and Campbell Bannerman—they were neither more able nor more striking in personality than Fillmore Buchanan Arthur or Harding The Duke of Wellington was a valiant soldier so was Grant but the one proved no better than the other when entrusted with the responsibilities of high civil office There have been great men in both positions and men of mediocre attainments too The

BIG AND LIT-  
TLE STATES-  
MEN

theme is one on which several pages might be written but this is not the place for it

At any rate the king chooses the prime minister and the latter proceeds to select both the ministers and the cabinet ministers

HOW THE  
PRIME MINISTER  
SELECTS  
HIS CABINET

Ostensibly he has a free hand in making his selections but there are various considerations of a practical nature which he must take into account. If a new prime minister were to regard nothing but his own personal preferences in constructing a ministry he would make trouble in the ranks of his supporters. He must see that various interests are represented. For example he cannot select all the members of his ministry from the House of Commons taking none from the House of Lords<sup>1</sup>. Both peers and commoners have figured in every British ministry for two hundred years but the proportion from the House of Commons has been steadily increasing<sup>2</sup>. Lords have naturally been more numerous in Conservative than in Liberal or Labor cabinets.

Every minister of the crown must be a member of parliament of one House or the other. But this does not mean that he must

MINISTERS  
MUST BE  
MEMBERS OF  
PARLIAMENT

be a member of parliament at the time of his appointment. Sometimes he becomes a member after his appointment to the ministry. This can be arranged of course by making him a peer and thereby giving him a seat in the House of Lords but the more usual procedure is to open a constituency by inducing some member of the House of Commons to vacate his seat and make way for the newly appointed minister. This entails a special election (or by-election) to fill the vacancy and the newly appointed minister becomes a candidate at this by-election.

He can do this the more easily because neither law nor custom in Great Britain requires that a candidate for the House of Commons shall live in the constituency which he seeks to represent. When therefore a prime minister desires to include some outsider in his ministry he arranges that a vacancy shall be created in a safe con-

<sup>1</sup>There is a statutory provision which virtually requires that both Houses shall be represented in the cabinet. It prohibits more than five principal secretaries of state and five under secretaries from sitting in one House at the same time.

<sup>2</sup>In the first cabinet of George III no fewer than thirteen of the fourteen members were peers. It was not until after the Reform Act of 1832 that commoners began to get an equal share of representation in the ministry. Since that time they have usually constituted half or more than half the cabinet.

stituency. The member who gives up his seat is sometimes rewarded for his generosity by being made a peer or given some dignified office which does not necessitate his sitting in parliament. The newly appointed minister goes to the scene of the by-election gets himself nominated and is usually elected. The prime minister so arranges it with the party organization. But the plans sometimes miscarry and the constituency does not turn out to be so safe as was assumed.

Until a few years ago it was a rule that any member of the House of Commons who accepted a ministerial post thereby vacated his seat and had to go back to his constituency for re-election. The origin of this rule is interesting. Back in the days when the kings of England took an active part in politics it was their practice to seek control of the House of Commons by appointing various influential members to offices of honor and profit in the gift of the crown. This constituted a species of refined bribery. The member of parliament took the king's bounty, became obligated to him, and thereafter voted with the king's friends. But parliament grew resentful of this practice and eventually undertook to get rid of it by passing a statute which provided that any member of the House of Commons who accepted a position of profit from the crown should thereby lose his seat.<sup>1</sup>

THE OLD RULE  
AS TO VACAT-  
ING A SEAT ON  
A POINT  
MENT TO THE  
MINISTRY

As this statute applied to newly appointed ministers as well as to other officials of the crown, it involved a serious interference with the course of public business. For whenever a new ministry took office it became necessary for several of them (those who were members of the House of Commons) to go back to their respective constituencies and get themselves re-elected. And this even though they had been elected to the House only a few days before. The requirement was suspended by act of parliament during the World War, and in 1926 it was abolished altogether.

THE NEW  
PROVISION

In forming his cabinet the prime minister must also have regard for geography. It would be a grave offense to choose only Englishmen, Scotchmen, or Welshmen. Sentiment and tradition demand that recognition shall be given to the various parts of the United Kingdom. As a matter of good politics the prime minister must strive to make his cabinet as broadly representative as possible.

—having regard to sectional social religious and economic diversification as well as to his own personal preferences. This high grade patronage for such it is must be distributed in such a way as to strengthen the prime minister's party or coalition of parties. It is an unwritten law of British politics however that men who have served in previous ministries of the same political party must be offered ministerial posts if they are still in active political life. Likewise it is understood quite naturally that the men who have been the most effective parliamentary critics of an outgoing cabinet are entitled to places in the incoming one. And recognition must of course be given to different factions in the party if there are such as is often the case. This as may readily be seen sometimes leads to embarrassment for it occasionally happens that one prominent member of parliament refuses to enter the ministry unless another is kept out.

All in all the process of making a new ministry gives opportunity for the exercise of all the tactical skill that a new prime minister can command.<sup>1</sup> For he has only a limited number of ministerial offices to pass around—with an almost unlimited number of receptive souls waiting for a call to serve their country. So every ministry is to some extent a compromise. Never does it represent exactly what the prime minister would do if he had a free hand. His problem is to select from among the availables those who he thinks can be woven into a unit. As one commentator has said he is like a child trying to construct a figure out of blocks which are too numerous for the purpose and which are not of shapes or sizes to fit perfectly together.

Nor are the prime minister's worries confined to the problem of determining who shall be included in the ministry. The distribution of offices or portfolios as they are called must also be made among those who are taken in. Who shall be made chancellor of the exchequer or secretary of state for foreign affairs—the two most important positions in the cabinet? And what ministers will have to be content with a designation as junior lord of the treasury, civil lord of the admiralty or charity commissioner? In deciding such questions

<sup>1</sup> See the interesting chapter on 'The Formation of a Government' in W. Ivor Jennings *Cabinet Government* (Cambridge 1936) pp. 47-69.



the prime minister takes into account each minister's experience his skill as an administrator and his ability to hold his own in parliament whenever the work of his department is criticized by the opposition as it is bound to be. Some heed must also be paid to each minister's own preferences especially in the case of those who are to occupy the higher positions.

Must the prime minister also take into account the wishes of the king in choosing his ministerial associates and assigning them their offices? Under ordinary conditions the answer is No.

It is hardly conceivable that a British king would nowadays decline to accept anyone whom his prime minister insisted upon having in his cabinet. But it has not always been so. Queen Victoria on one

HAS THE MON-  
ARCH ANY  
INFLUENCE  
UPON THE  
LECTION?

occasion criticized a prime minister's selections and is believed to have successfully objected to the inclusion of certain statesmen who were distasteful to her. She claimed and exercised a woman's privilege. Today a monarch would be very loath to inject his own personal feelings into the process of cabinet making.

The size of the cabinet is not fixed by law but by usage. Such ministerial posts as those occupied by the chancellor of the exchequer the lord chancellor the first lord of the admiralty the minister of health the president of the board of trade and the secretaries of state for foreign affairs for war for India for the dominions for the colonies

WE AT MIN-  
ISTERS DO  
CONSTITUTE THE  
CABINET

and for the home department—the regularly carry cabinet rank with them. Other portfolios such as those held by the secretary of state for Scotland the secretary of state for air (i.e. military and naval air forces) the minister of transport and the minister of labor are usually but not always included while some others such as the postmaster general and the first commissioner of works are occasionally brought in.<sup>1</sup> The remaining ministers (including under secretaries and parliamentary secretaries) are left out although there is nothing to prevent their being summoned to cabinet meetings.

The following ministers constitute the cabinet with the present Prime Minister and First Lord of the Treasury Lord Privy Seal Lord Irresistible the Colonial Lord Chancellor the Chief Justice the Chancellor the principal Secretaries of State for Foreign Affairs Home Affairs War Dominions Colonies Scotland and the First Lord of the Admiralty President of the Board of Trade Minister of Health President of the Board of Education Minister of Agriculture and Fisheries Minister of Labor Minister of Transport and Minister of the Coordination of Defense.

ings if the prime minister at any time desires their presence<sup>1</sup>

Under normal circumstances all the ministers are drawn from one political party—the dominant party in the House of Commons

For over two hundred years prior to 1915 every ministry was constituted in that way But during the critical years of the World War it was deemed advisable to place the ministry on a coalition basis by taking members from all three political parties And since 1931 the practice has again been followed by the MacDonald Baldwin and Chamberlain ministries All three have been coalition ministries but with a preponderance of members drawn from the Conservative ranks

**HISTORICAL BACKGROUND** On the origin and growth of the privy council the ministry and the cabinet there is much material in J F Baldwin *The King's Council in England during the Middle Ages* (New York 1913) A V Dicey *The Privy Council* (London 1887) Edward R Turner *The Cabinet Council of England in the Seventeenth and Eighteenth Centuries 1622-1784* (Baltimore 1932) and Mary T Blauvelt, *The Development of Cabinet Government in England* (New York, 1902) The various books relating to the history powers and functions of the crown listed at the close of the preceding chapter deal with the evolution of the royal advisory bodies

**PRIME MINISTERS AND THE PROCESS OF CABINET MAKING** Strange to say no book has yet been written on the office of prime minister in Great Britain its origin development and present-day influence But Clive Bingham *The Prime Ministers of Britain* (New York, 1922) and F J C Hearnshaw *British Prime Ministers of the Nineteenth Century* (London 1930) provide an informing and readable series of biographical sketches Mention should also be made of the last named author's book on *The Political Principles of Some Notable Prime Ministers of the Nineteenth Century* (London 1930) The process of cabinet making is described in W R Anson *Law and Custom of the Constitution* (4th edition 2 vols London 1922-1935) Vol II Part I pp 108-150 Herman Finer *The Theory and Practice of Modern Government* (2 vols New York, 1932) Vol II pp 949-994 and H Hor Jerrings *Cabinet Government* (Cambridge, 1936)

**BIOGRAPHIES AND MEMOIRS** Illuminating material may also be drawn from the biographies and memoirs of recent prime ministers—for example, W F Monypenny and G E Buckle *Life of Benjamin Disraeli* (6 vols London 1910-1920) John Morley *Life of W E Gladstone* (3 vols New York, 1903) Lady Gwendolen Cecil, *Life of Robert Marquis of Salisbury* (2 vols.,

All ministers whether members of the cabinet or not, receive substantial salaries These salaries are voted by parliament each year and may be reduced at any time

London, 1921) E. T. Raymond *Life of Lord Rosebery* (London, 1923) J. A. Spender and C. Asquith, *Life of Lord Oxford and Asquith* (2 vols. London 1932) H. H. Asquith *Fifty Years of Parliament* (2 vols. London, 1926) and his *Memoirs and Reflections* (London, 1928) Harold Spender *The Prime Minister: Life and Times of David Lloyd George* (London 1920) and H. H. Tiltman, *James Ramsay MacDonald* (London, 1931)

## CHAPTER VI

### CABINET FUNCTIONS AND RESPONSIBILITY

The first duty of a government is to live. It has no right to be a government : all unless it is convinced that if it fell the country would go to everlasting smash.  
—*Alfred Bennett*

During the past half century the functions of government have been rapidly multiplying. There is more work to be done than there used to be. This has greatly increased the powers and influence of the administrative authorities; those whose duty it is to carry out the will of the people as expressed by the legislative body. In other words the ministers and their subordinates. As a result of this the importance of the cabinet in the governmental system is not easy to overestimate. Englishmen refer to it as the buckle that binds all arms of the government together. It has been called the keystone of the political arch and the helm of the ship of state. There is difficulty in finding a metaphor that will do it full justice.

In discussing the work of the British cabinet a distinction should be made between individual and collective functions. Each member of the cabinet is responsible for the conduct of some branch of the national administration. These branches of administration correspond for the most part to the departments which are headed by members of the President's cabinet in the United States. Then in a collective sense, the members of the cabinet form the great executive committee of parliament. They prepare its business, guide its deliberations and keep it at all times under control.

Both classes of functions are performed by the cabinet under the direction of the prime minister. He is supposed to exercise a general supervision over the work of his twenty colleagues. He is the umpire in the case of any differences of opinion among them. When he and one of his ministers find themselves unable to agree it is the minister who resigns. On the other hand the prime minister cannot ride roughshod over his col-

leagues (He is their leader not their boss.) He must carry them with him, for they have friends in the House of Commons, and dissension in the cabinet would soon spread to that chamber. Yet his power is enormous—so long as he remains prime minister. On his side the royal prerogative lies and acts as powerfully as it did in the days of the Tudors. In theory, a prime minister has no right to tell the home secretary or the postmaster general that this or the other thing must be done. But he can advise the crown to dismiss any minister and select a new one. And he can do this very delicately by writing, as a prime minister once did to Charles James Fox, that the king has been pleased to give a new commission for the office of lord high treasurer in which I do not perceive your name. As a rule of course he does not have to go so far. Difficulties can usually be ironed out before resignations are in order.

Next to the prime minister the chancellor of the exchequer is the most conspicuous member of the cabinet. Public administration is largely a matter of opening or closing the public purse and the chancellor is the real head of the British treasury, although nominally this institution is controlled by a treasury board of five members. THE CHANCELLOR OF THE EXCHEQUER.

This board however is one of the numerous shams in British administration. It never meets or virtually never. Almost all its functions are turned over to the chancellor of the exchequer. (His duties include practically all those which pertain to the secretary of the treasury at Washington and more besides.) He has charge of collecting the revenues and of paying out all funds appropriated by parliament. He has various duties connected with the currency and the government's relations with the Bank of England.

In addition he prepares the annual budget. This huge array of figures is laid before the cabinet and after approval by that body is submitted to the House of Commons. The chancellor of the exchequer is always a member of this House HIS WORK  
C - THE  
E - DEPT because every financial measure including the budget, must be first considered there. In connection with the introduction of the budget the chancellor of the exchequer makes his annual budget speech which sets forth any changes in the financial plans of the government. It is from this speech that the public gets its

The first lord of the treasury (who is usually the prime minister) the chancellor and three junior lords. For a full account of the treasury's organization and workings, see T. L. Heath, *The Treasury* (London 1977).

first information concerning new taxes and other proposed changes in the government's fiscal policy. Hence the chancellor of the exchequer must needs be a clear, ready and fluent speaker, able to hold his own on the floor. This is even more important than a knowledge of public finance, for the chancellor can obtain from his subordinates all the expert advice that he may require in financial technique.

The chancellor of the exchequer should not be confused with the lord chancellor. The lord chancellor of Great Britain occupies a post which has no close analogy in the United States.

THE LORD  
CHANCELLOR

He presides in the House of Lords and is usually a member of that body. This does not mean that a commoner can never be chosen to the office; any British subject may be chosen and then raised to the peerage. Indeed he could preside as lord chancellor without being made a peer. The post of lord chancellor is the highest office in the British judicial system, for its incumbent is the titular head of the Court of Appeal, although in practice he rarely sits there. But he does actually preside at sessions of the law lords when they exercise the judicial functions of the House of Lords.<sup>1</sup> He also recommends to the crown the appointment of judges in the higher courts and himself appoints the justices in the lower tribunals.<sup>2</sup> To that extent he performs duties which are somewhat analogous to those of the attorney general in the United States.

One reads in commentaries on British government that the cabinet contains several secretaries of state. That statement is literally

THE  
CABINET  
SECRETARIES OF  
STATE

true, but it is apt to create a misleading impression in an American mind. The British cabinet does not contain several secretaries of state in the American sense. It is merely that the term secretary of state forms part of the title in the case of several principal ministers whose functions cover a varied range.

First there is the secretary of state for foreign affairs. This minister is head of the British foreign office.<sup>3</sup> As such he is the official adviser of the crown in its dealings with foreign powers; he supervises the conduct of all diplomatic relations, negotiates treaties and recommends appointments in the diplomatic service. His duties correspond in a general way

1 FOREIGN  
AFFAIRS.

<sup>1</sup> See below Chapter XVII.

<sup>2</sup> The secretaries of state for Foreign Affairs, for the Home Department, for War, for Scotland and for the Dominions, for the Colonies and India and for Air.

<sup>3</sup> J. Tilley and S. Gascoyne *The Foreign Office* (London 1933).

to those of the secretary of state at Washington. Due to the vastness and complexity of Great Britain's foreign interests the position of secretary of state for foreign affairs is one of great importance so much so that the prime minister has occasionally taken this portfolio into his own hands. But the British foreign secretary is not like the American secretary of state the ranking member of the cabinet.

The secretary of state for war occupies a post which exists in all countries and with substantially similar functions.<sup>1</sup> His department has general supervision over the land forces of the kingdom. The air service is not under his control but <sup>2</sup> WAR is committed to the care of a separate department. On the other hand and somewhat curiously there is no secretary of state for the navy—although the navy has traditionally been England's first line of defense. Naval affairs are under the supervision of an admiralty board (the successor to the lord high admiral of bygone days). This board is made up of a first lord of the admiralty, four or more sea lords who are regular naval officers of high rank, one civil lord and various secretaries.<sup>2</sup> In the deliberations of this board however the influence of the first lord of the admiralty is virtually controlling. And it ought to be for he shoulders the entire responsibility to parliament for every action of the admiralty board.

The secretary of state for air occupies a post that was created in 1917. Before the World War the air forces of Britain were divided between the army and the navy as they still are in the <sup>3</sup> AIR United States. Cooperation between the two was arranged through a joint air committee which in 1916 became a regular board with a president at its head. This in turn gave way to an air council of which the secretary of state for air is now the controlling head. It has supervision over civil aviation as well as over the royal air force. Close cooperation between the war office, the admiralty and the air ministry is secured by a joint committee of imperial defense.

The other principal secretaries have departments which find no close analogy in the American scheme of national administration. The secretary of state for the home department, or home secretary as he is more commonly called, has to <sup>4</sup> HOME AFFAIRS, do with many matters of domestic administration such as the receiving of petitions for presentation to the crown, the maintenance of peace and order within the kingdom, the enforcement of

<sup>1</sup> H. Gordon, *The War Office* (London, 1935).

<sup>2</sup> G. Ast, *The Navy Today* (London, 1937).

factory laws the inspection of municipal police in the boroughs or cities, the direct control of the London metropolitan police, the naturalization of aliens and the supervision of prisons. He also has general charge of the registration of voters and the holding of parliamentary elections. Finally, the home secretary advises the crown in the exercise of its pardoning power.<sup>1</sup>

The secretary of state for the colonies has charge of the relations between the home government and the governments of the various colonies. Until 1925 the colonial office had to do with the self governing dominions as well but in that year a separate office, the dominions office, was created to deal with them. The headships of both the colonial office and the dominions office were combined in the same secretary of state until 1930 when they were separated. The cabinet now contains both a secretary for the dominions and a secretary for the colonies. The relations between London and the governments of Canada, Australia, South Africa and New Zealand are carried on through the dominions office. Jamaica, Malta, Hongkong and the rest are dealt with through the colonial office. India is under the supervision of a separate department, the India office, headed by a secretary of state for India whose duties will be explained later.<sup>2</sup> There is also a secretary for Scotland and since 1926 he has ranked as a principal secretary of state.

There is no unified department of justice in Great Britain as in continental countries. The work is divided among four ministers, namely, the lord chancellor, the home secretary, the attorney general and his colleague, the solicitor general. The duties of the other ministers, such as the ministers of labor, health and transport, the president of the board of education and the board of trade, the minister of agriculture and fisheries and the lord president of the council are indicated by the designations of their respective offices save in the case of the minister of health.<sup>4</sup> His administrative duties are concerned not only with

For a full account of home office activities see the monograph by E. Troup, *The Home Office* (London 1925).

G. V. Feddes, *The Dominion and Colonial Office* (London 1916).

See below Chapter XX.

The Whitehall Series of monographs on the British ministerial departments is not needed to explain in detail the work of a department—for example, H. L. Smith, *The Board of Trade* (London, 1928); F. Floud, *The Ministry of Agriculture and Fisheries* (London 1927); L. A. Selby, *Board of Education* (London, 1927).



the maintenance of the public health but with the supervision of poor relief and local government. His office took over in 1910 the functions which had previously been performed by the local government board.<sup>1</sup>

In the United States the expansion of governmental administrative functions during recent years has resulted in the creation of numerous boards, commissions and administrations which are not under the control of any of the regular departments. As will be seen a little later the same is true in Great Britain but to a much smaller extent. Most of the new activities undertaken by the British government have been allotted to the existing ministries (labor, health, transport, etc.). The local trade boards and employment exchanges, for example, have been placed under the ministry of labor. But the government has also assumed responsibility for the systematic organization of electricity supply throughout the country and it has taken under its wing a monopoly of radio broadcasting, both of which activities have not been placed under any regular department but are handled by special authorities.

Taking it as a whole there is neither symmetry nor logic in the British system of national administration. Various parts of it are the outcome of a long development. Other parts are the result of the vast and rapid increase in governmental activities during recent years. There are phantom boards which have no real power and there are boards which have immense authority. An American accustomed to an administrative organization that can be charted on a blueprint stands amazed at this welter of first lords and junior lords, principal secretaries and secretaries who are heads of their offices but do not rank as principal secretaries, chancellors and presidents of boards, ministers of this and that, lords privy seal and commissioners. But the machinery functions and on the whole it functions well. From time to time proposals have been made to overhaul and simplify it but nothing save piecemeal reorganization has resulted.

So much for the cabinet ministers as responsible individual administrators as heads of their various departments. As has already been indicated they also form a body, a cabinet, with collective functions and responsibility. This cabinet as British writers often tell us is the pivot on which

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A. C. C. L. A. R. Y

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OF RANK  
TITLE A. D.  
OFFICE

THE CABINET  
AS A COLLEC  
TIVE ORGAN

the whole political machinery turns. It makes the great decisions. Technically it is merely a committee of the privy council made up of those privy councillors whom the prime minister chooses to call, assembling at his behest and discussing only such business as he may permit to come before it. Actually it is the steering wheel of the ship of state. It sets the direction of national policy. In theory it is responsible to the House of Commons for everything that it does but in reality the House acts in accordance with its leadership and direction.

\* Regular meetings of the cabinet are held once a week or oftener in normal times usually in the morning or early afternoon hours.

Special meetings are convened at the call of the prime minister and when serious emergencies arise they are held at any hour of the day or night often on very short notice. It is customary for the cabinet to omit its regular meetings during the parliamentary recess the members coming together only when needed. The meetings ordinarily take place at the prime minister's official residence No. 10 Downing Street or occasionally in the prime minister's room at the House of Commons. There is no fixed quorum no votes are taken and no speeches made. The proceedings are quite informal.

Members do not sit in any order of precedence each picks his own seat and occupies it regularly. Smoking at cabinet meetings

is strictly tabooed and some ministers have looked upon this as a rough deprivation. Before each regular meeting a batch of papers relating to the business is sent to each member. An important innovation of post war days is the frequent holding of committee meetings at which committees of the cabinet deal with special subjects or groups of subjects. Two committees have now become relatively permanent—one on home affairs and the other on finance. These cabinet committees of course have no final powers. They merely report to the whole body. A considerable amount of business is also virtually settled by private conferences between the prime minister and a few of the more influential members before the cabinet meets. It is a tradition moreover that the prime minister never consults the cabinet about filling a vacancy in its own ranks and rarely does he do it about other appointments—for example to judgeships or governorships of colonies.

^ Prior to 1917 the cabinet had no secretary and kept no records

This curious omission had continued from the earlier days when the cabinet was a mere clique of the privy council meeting secretly. The prime minister simply jotted down some notes of the proceedings for his own use or for the information of the king. Each member of the cabinet made mental note of matters relating to his own department for it was an inflexible rule that no one except the prime minister should make any written memoranda at cabinet meetings. The result was that misunderstandings occasionally arose through differences in ministerial recollections of what had been decided. David Lloyd George who was prime minister in 1917 thought this whole arrangement too loose and unbusinesslike so he appointed a regular cabinet secretariat with the function of putting business into shape for the meetings, keeping the records and having the custody of all official documents. This secretarial establishment was rapidly enlarged until within five years it had grown to have more than a hundred employees and its expansion evoked much adverse criticism in parliament.

THE SECRETARIAT

When the Bonar Law ministry came into office (1922) the secretariat was greatly reduced in personnel but it still remains in existence and has apparently become a permanent part of the governmental machine. Its functions and powers have never been defined but in general it prepares the agenda for cabinet meetings, gathers data for the cabinet and its committees, keeps the records and does whatever else the cabinet asks it to do. The head of the secretariat or his principal assistant secretary attends cabinet meetings and takes the minutes but the minutes are not made public. In all respects other than in secretarial service the cabinet holds to its traditional informality.

ITS REAL FUNCTIONS

Most of the cabinet discussions pertain to matters of general policy or to questions which involve the establishment of some important precedent. Routine details which relate to a single department are not usually laid before it. Each minister is supposed to deal with such things on his own responsibility or after conference with the prime minister alone. A cabinet discussion is not followed by a vote save in very exceptional instances. It does not bind the prime minister. He can advise the crown in the face of an adverse cabinet vote and has done so on more than one occasion.

CABINET DISCUSSION

On the other hand a prime minister naturally hesitates to act in

the face of cabinet disapproval. The recognition of the Southern Confederacy during the American Civil War was averted by a majority vote of the cabinet against the wishes of the prime minister, the foreign secretary, and the chancellor of the exchequer (Palmerston, Russell, and Gladstone—surely a weighty trio). If a cabinet discussion discloses a marked difference of opinion among the ministers, the usual practice is to leave the question open until some compromise can be reached for the action of the cabinet, whatever it is, must be outwardly unanimous. No divided counsel can be tendered to the king, nor can the cabinet go before parliament with a division in its ranks. It must act as a unit. If any member, after a decision has been reached, feels that he cannot support this outcome, it is his duty to resign and make way for someone who feels differently. For solidarity is essential to the effectiveness of the cabinet's leadership in parliament. On rare occasions, however, it has been announced that one or more members of a coalition cabinet differed from their colleagues upon some highly controversial question but would continue in office notwithstanding. This is possible where the issue is not a vital one.<sup>1</sup>

The most important collective function of the cabinet is to formulate the policy of the nation and the legislative program for each session of parliament. The various items in this program are then introduced as government measures with the prestige of the ministry behind them. Not only this but the measures are advocated, explained, and defended upon the floors of both chambers by members of the ministry, and the votes of the party majority are whipped into line to put them through. Not all bills are brought before parliament by the cabinet, of course, but practically all measures of general importance must come up through this channel or they have virtually no chance of being passed.

So when the British prime minister or a member of his ministry announces that some change in the currency or banking system will be made, or a new tax levied, or a new office established, or some additional battleships built—this announcement means that such action is almost certain to be taken. If the ministers do not change their minds, or decide to compromise, parliament must either accept

For an illustration of this agree to disagree procedure see N. L. Hill and H. W. Stok, *The Background of European Governments* (New York, 1935) pp. 58-64.

their decision or get a new ministry. Sometimes of course the ministers temper their demands or even reverse themselves when they find more opposition than they expected. A good example was afforded by Foreign Secretary Sir Samuel Hoare's proposed olive branch to Italy (1935) in connection with her Ethiopian venture. Apparently it had been endorsed by the cabinet but when the storm of parliamentary opinion broke it retreated and left Hoare out on a limb. He generously helped the cabinet save its face by voluntarily tendering his own resignation as one of its members.

Right here in fact is the most conspicuous difference between the English and the American methods of lawmaking. In the United States the cabinet does not have any official responsibility for the preparation of government measures and indeed Congress is disposed to resent being told by the executive what it ought to do. It objects to must legislation even though members supporting the administration do not always voice their resentment openly. Members of the American cabinet do not sit in either house of Congress and hence cannot direct the debates as the English ministers do. They have no certain assurance that a majority in Congress will stand behind anything that they propose.

But in Great Britain virtually all important legislation is planned and drafted by the ministers introduced by them and put through the House of Commons at their insistence. This does not mean however that the British system is superior to the American. Both methods have their merits and their shortcomings. The British plan makes for firm and effective leadership but it also results in a good deal of legislative dictatorship. It enables a few ministers of the crown to put laws on the statute book which parliament at times would not favor if it felt free to make its own choice.<sup>1</sup> The American plan occasionally results in rebuffs to the executive (as when Congress in 1937 refused to accept President Franklin Roosevelt's proposal to reform the United States Supreme Court). Sometimes however the American procedure leads not only to executive rebuffs but to delays and unsatisfactory compromises on the other hand it has the merit of providing a safeguard against executive aggrandizement.

ITS CONTRAST  
WITH THE  
AMERICAN  
CABINET IN  
THIS RESPECT

<sup>1</sup> On this point see the discussion of Cabinet Dictatorship in Sidney and Beatrice Webb's *Constitution for the Socialist Commonwealth of Great Britain* (London 1910) pp. 71-74 also Lord Hewart, *The New Dictatorship* (New York 1929) especially chap. vi.

Much has been written about ministerial responsibility as it exists in British government. No principle is more firmly established and none is of more far reaching importance. It is not a simple principle easy to understand for it has a threefold application.

First of all the English ministers are responsible to the king. This is for the most part a merely technical responsibility. The king cannot dismiss a member of the cabinet in the way that the President of the United States can do it. An English minister so long as he possesses the confidence of the premier and the House of Commons could not be ousted by the king without bringing the whole mechanism of the government to a standstill. For the entire cabinet would resign in protest, a majority in the Commons would support its action, a general election would have to be held and the king would be giving a hostage to fortune. So ministerial responsibility to the king is not a very serious affair. Yet there is a measure of such responsibility. The monarch must be kept informed. Queen Victoria once rebuked Lord Palmerston by writing to him that she expects to be kept informed of what passes between him and foreign ministers before important decisions are taken based on that intercourse. This royal right to be kept informed by the ministry through the prime minister is one that is now fully recognized.

Second the members of the ministry are responsible to one another. This is necessarily so because solidarity is the essence of the British ministerial system. So it is a matter of each for all and all for each. The fault of one minister may bring the wrath of the Commons upon the ministry as a whole. For this reason every minister is constrained not merely as a matter of prudence but of honor to seek the opinion of his colleagues before taking any action that might evoke criticism. This principle of intra cabinet responsibility was definitely established in 1851 when Lord Palmerston without consulting his colleagues expressed to the French ambassador his approval of a *coup d'état* which had taken place in France.<sup>1</sup> For doing this Palmerston was dismissed from the ministry. Some years ago (1922) the secretary of state for India was forced to leave the cabinet because he made public an official dispatch without consulting his colleagues.

See *h. loc.* Chapter XXII

On the other hand so long as a member of the cabinet acts in accord with a policy which has been approved, he can feel assured of unified support from this body under normal circumstances. His fellow ministers will stand solidly behind him. To drive him from office would necessitate forcing the whole ministry out. But all this is subject to the qualification that even ministers of the crown are human beings with the usual frailties of mankind, who will sometimes leave a colleague in the lurch and let him take the punishment alone. The Hoare incident, already mentioned, gave an example of this.

Finally and most important, the members of the ministry are responsible to the House of Commons. That is what the term ministerial responsibility really means. There is no statutory requirement that a ministry shall go out of office whenever it shows itself unable to secure and maintain the support of a majority in the House. But by a custom which has now prevailed for nearly two hundred years it is under obligation to do so. The ministry must always be able to demonstrate by the votes of a majority in the existing House of Commons, or by success at a general election, that it possesses the confidence of the country. Loss of this confidence means loss of office.

RESPONSIBILITY TO THE HOUSE OF COMMONS

There are various ways in which the House of Commons may show its lack of confidence in the ministry and thereby force it either to resign or go to the country. When the financial estimates are under consideration the House may vote to reduce the salary of a minister. The principle of solidarity would then require his colleagues to defend him against this attack. Or the House may reject some government measure. An amendment to such a measure does not necessarily imply want of confidence unless the cabinet insistently opposes the amendment and makes an issue of it. Amendments brought forward in the House are often accepted by the minister in charge of the bill. In 1937 for example the chancellor of the exchequer Sir Neville Chamberlain laid certain tax proposals before the House with the cabinet's approval. But unexpected opposition flared up and the cabinet backed down thus avoiding what might have been a want-of-confidence vote.

HOW A MINISTRY CAN BE OUSTED

Again the House may pass some bill which the cabinet opposes, and the issue may become one of confidence in the government. Finally, if the House is dissatisfied with the cabinet's general policy

without reference to any particular measure it can at any time pass a resolution of censure or disapproval. British cabinets, as a matter of history, have rarely been forced to resign during the past hundred years by reason of an adverse vote in the House of Commons. They have gone out of office for the most part as the result of adverse action by the people at the polls. On the other hand a decision to dissolve parliament and call a general election has sometimes been dictated by signs of a waning hold on the House. Snap votes and mishaps due to the absence of ministerial supporters do not entail the cabinet's resignation. The cabinet has at all times the privilege of demonstrating by proposing a resolution of confidence its control of a majority.

It is the privilege of the cabinet when it finds itself defeated or faced by defeat in the House to ask for an appeal to the people. In

other words the prime minister can request the king to dissolve parliament and order a general election. It is contended that the king might refuse to grant this request provided he could find somebody else able to

carry on as prime minister with a majority behind him. But that is a situation which, in the nature of things, would almost never arise. If an election is ordered, the old ministry continues in office during the campaign, but if the result of the polling is unfavorable it does not usually wait for parliament to assemble and vote want of confidence. The practice is for the ministers to hand over their seals of office and make way as quickly as pending business can be cleaned up. This is a matter of a few days or at most a few weeks. Thereupon the king sends for the leader of the victorious party and asks him to form a new ministry. This summons of course is not unexpected, and the new prime minister usually has the organization of his cabinet lined up before the royal summons arrives.

Ordinarily the cabinet is made up of members drawn from one political party, but in times of national emergency, when it is desired

to have all the parties work together, a coalition cabinet is sometimes formed. When the World War began in 1914 a Liberal ministry headed by Mr

Asquith was in power. A year later, when the immensity of the struggle became recognized, the prime minister suggested that his parliamentary opponents should be represented in the cabinet, and they accepted. So a coalition ministry made up of Liberals, Conservatives, and Labor members was selected. Mr Asquith con

THE CABINET'S  
RIGHT OF  
APPEAL TO  
THE PEOPLE.

COALITION  
CABINETS.



tinued as prime minister until 1916 when he was replaced by Mr Lloyd George. This coalition continued for a time after the war was over but went to pieces in 1922.<sup>1</sup> Thereupon a general election was held and the Conservatives were successful. But their tenure of power was brief for they went to the country in 1923 on the issue of inaugurating a protective tariff and were defeated.

The general election of 1923 presented a new problem of ministerial responsibility for no one of the three parties now controlled a majority in the Commons. The Conservative had the largest group of members in the House with the Labor party second and the Liberals third. Hence the Conservatives were outvoted in the House of Commons when it reassembled and their cabinet was forced to tender its resignation. Thereupon the leader of the Labor party was summoned by the king and proceeded to construct a ministry. For nearly a year this Labor ministry carried on although it did not have a unified majority of the Commons behind it. On appropriation bills and on other important measures the Liberals gave it support. But it existed on sufferance and could not carry into effect the pledges that had been made in the Labor party's platform.

Finally in the autumn of 1924 the Liberals withdrew their support on a vital question and thereupon the Labor prime minister Ramsay MacDonald advised a new election. As a result of this election the Conservatives were returned to power with a majority over the other two parties combined and for a time the old arrangement of a ministry supported by a solid majority was restored. But not for long because another election came in 1929 and once more no single party obtained a majority in the House. The Labor party having done best of the three was again given the reins having been assured that the Liberals would help on vital issues. But in 1931 this ministry was dissolved by a split in its own ranks and replaced by another coalition of Laborites, Conservatives and Liberals with Ramsay MacDonald continuing as prime minister.

This coalition of Nationalists as they called themselves remained in office under MacDonald's leadership until 1935 but its support came chiefly from the Conservatives. In the early summer of that year Mr MacDonald gave up the prime ministership and was re-

THE MINOR  
TY CABINET  
OF 1923—  
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CABINET  
CHAIRMAN  
194-1931

<sup>1</sup> For some interesting details of the coalition see E. M. Sait and D. P. Barrow, *British History Today* (New York 1935) chapter 11.

placed by the Conservative leader Mr Stanley Baldwin. A general election ensued with the result that the Conservatives won more seats than all the other parties combined. They were consequently in a position to install in office a straight Conservative ministry but deemed it best to continue on a Nationalist or coalition basis although the majority of the ministerial posts were given to Conservatives. The present English ministry therefore is a coalition in name but Conservative in fact. Its prime minister is Neville Chamberlain who succeeded Stanley Baldwin in 1937.

Ministerial responsibility does not necessarily postulate a strict two party system. It can be maintained after a fashion when there are several party groups in the legislative body as witness the experience of France. But the principle of ministerial responsibility can be more smoothly operated when there are only two parties one controlling the government and the other constituting

the opposition. Parliamentary government works best indeed, when the ministry has a solid working majority behind it but not too large a majority. A strong united vigorous opposition keeps a ministry on its mettle and makes its responsibility real. Parliamentary government cannot function efficiently if the ministry falls every few months. But it functions most efficiently when the ministry is kept in constant fear of falling. The history of parliamentary government indicates that cabinets which are formed from a single party and are supported by a relatively small majority do better work than cabinets of any other kind. The future of ministerial responsibility in England is therefore bound up with the question whether the country is going to maintain two strong political parties or more than two.

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GENERAL. The various institutions and responsibilities of the cabinet are dealt with in all the treatises and textbooks on English government for example Anson's *Law of the Constitution* (see above p. 92) Lowell's *Government of England* Vol. I chaps. II-IV. Ogg's *English Government and Politics* chaps. VI-IX. Marriott's *English Political Institutions* chaps. IV-V. J. J. Clarke *Outlines of Central Government* (7th edition London 1935) Lovell's *Government of England* chaps. II-IX. Courtney's *Working Constitution of the United Kingdom* chaps. XII-XIII and Bagehot's *English Constitution* chaps. I VI VII-IX. Special mention should also be made of the discussions in W. Ivor Jennings' *Cabinet*.

*Government* (Cambridge 1936) pp 70-113 Sir John A R Marriott *Mechanism of the Modern State* Vol II chap xvi Lord Hewart *The New Despotism* (New York 1929) and Ramsay Muir *How Britain is Governed* (3rd edition London 1933) chap iii Discussions of the British cabinet system from a foreigner's point of view may be found in W Hasbach *Die parlamentarische Regierung* (Berlin 1919) Robert Redslob *Le régime parlementaire* (Paris 1914) and Hermann Savelle *Das Englische Kabinet System* (Munich 1934) An old book still possessing value is R H Gretton *The King's Government: A Study in the Growth of the Central Administration* (London 1913)

**SPECIAL STUDIES** Small volumes in the Whitehall Series (see above p 98 footnote) deal with the organization and work of the various ministerial departments A general survey of them all is given in the initial volume of the series—C Delile Burns *Whitehall* (London 1921) John Willis *The Parliament and Powers of English Government Departments* (Cambridge Mass 1933) is a good study of an important subject J V Finkle *British War Administrations* (New York 1919) explains the ways in which the government was adapted to war conditions

**SLECTED DOCUMENTS** Some interesting official documents and other papers are reprinted in E M Sait and D P Barrett *British Politics: The Story* (New York 1925) in V L Hill and H W Stokes *The Background of English Government* (New York 1935) pp 36-64 Special attention should be called to the *Records of the Committee on Ministers' Powers* (1937) officially cited as Cmd 4060

**BIOGRAPHIES AND MEMOIRS** Not only prime ministers but scores of other ministers have written autobiographies and memoirs or have had their biographies written. This has produced a rich depositary of interesting material concerning the day-to-day working of the ministerial system. From the vast array of such writings only a few can be mentioned here W S Churchill *Lord Randolph Churchill* (2 vol New York 1906) Lord Haldane *Autobiography* (London 1929) and H V L Fisher *James Balfour* (2 vols London 1931) Others may be found in the *Guide to Historical Literature* (New York 1931) pp 2-560 No should one omit to mention the anonymous *Ministerial Diary* (revised edition London 1933) which is widely read by the public and the press.

## CHAPTER VII

### THE DEPARTMENTS AND THE CIVIL SERVICE

Bureaucracy has become during the last century and especially during the last generation a far more potent and vital element in our system of government than the textbooks realize. It has indeed become the effective and permanent part of our system. The power of this bureaucracy, the permanent civil service, is to be found not only in administration but also in legislation and finance: not only administers the laws but largely shapes them; not only spends the proceeds of taxation but largely decides how much is to be raised and how it is to be raised.—*Ramsay Muir*

Administrative work has increased greatly in all countries during recent years. This has led to the multiplication of departments, bureaus, offices, commissions and boards; their total number is everywhere much greater than it was a quarter of a century ago. The ten regular executive departments in the national government of the United States now find themselves far outnumbered by the host of federal administrative agencies which have been called into existence more especially during the past few years. It used to be said that the American national administration was a planned affair with a certain amount of logic and symmetry embodied in it, while the English executive agencies had merely grown by accretion with confusing heterogeneity of names and relationships.

That statement, however, is no longer so close to the facts as it used to be. It is true that the ten regular executive departments in the United States (the heads of which constitute the President's cabinet) all stand on a common footing: were created in the same way, although at different times, and are alike in their relationship to the national chief executive. The various departments which are headed by cabinet ministers in England, on the other hand, have no uniformity of nomenclature; were created in different ways and are by no means on a common footing. The treasury department, for example, exercises a considerable measure of control over all the

GROWTH OF  
ADMINISTRATIVE  
FUNCTIONS.

AND THE  
ELABORATION  
OF ADMINISTRATIVE  
MACHINERY

others. But when one passes outside of the circle of what may be called the cabinet departments a much similar situation exists in both countries. In both there has been developed a vast network of non departmental machinery consisting of boards and bureaux, commissions and committee, and even public corporations organized to help the government do its work.

In the preceding chapter of this book a brief outline of the organization and functions of the British cabinet departments was given. But there are more ministers and departments outside the cabinet than in it. Prominent among these are the minister of pensions, the postmaster general, the first commissioner of works (or minister of public works), civil lord of the admiralty, financial secretary of the treasury, attorney general and church commissioner. Their functions in a general way are suggested by their titles. There are also eight undersecretaries of state associated with the eight principal secretaries, and no fewer than ten parliamentary secretaries deal with such branches of administration as naval affairs, trade, transport, mines, overseas commerce, agriculture, labor, pensions, education and health. All of these rank as members of the ministry, but are not members of the cabinet.

Nor do the ministries big and little cover the entire field of public administration in Great Britain. New agencies have had to be provided to meet new needs and old ones have had to be adapted or expanded. As in the United States, the expansion of administrative machinery has been in accordance with no fixed plan, and the result in both countries has been the same—a formidable array of administrative agencies created one at a time to meet specific problems, piling up on each other's heels, with duplication of effort, overlapping of functions and no clear boundaries of jurisdiction between them. There is need for administrative reorganization in Great Britain as in the United States, but in both countries the task of effecting it is a next to impossible one. For every ministry, bureau, board, office or public corporation becomes a vested interest on the day that it is established. All those connected with it, as well as their friends and the friends of their friends, will oppose to the last ditch any attempt to change its status, its powers or its relations with other administrative agencies.

In addition to the administrative agencies which have statutory powers there is a considerable list of advisory committees. These have no authority of their own but they often exercise a good deal of influence. Some, like the committee of imperial defense, the committee of civil research, and the economic advisory council have the function of advising the cabinet on matters within their respective fields of interest. But a much larger number of these committees have the duty of providing advice for individual departments of the government,—for the ministry of transport, the ministry of health, and so on. Advisory committees are believed to be rendering a useful service in Great Britain. More particularly they are proving helpful in determining departmental policy in contact with public opinion.

Both Great Britain and the United States have prided themselves upon maintaining a government of laws, not of men. But neither country is this boast any longer true. Government on both sides of the Atlantic has been becoming more and more a government of men, that is, a government by executive order rather than by law or decree rather than by deliberation. This development has been inevitable because no parliament or congress, however diligent, could possibly find time to supply all the detailed legislation that has been demanded in recent years. Much of this has been of a character so intricate and technical that no ordinary legislator could understand it. So legislative bodies in English-speaking countries have been rapidly adopting the Continental European practice of passing laws in general terms and then leaving to the administrative authorities the real job of elaborating them.<sup>1</sup>

It is true of course that orders-in-council, departmental regulations, and other such rescripts cannot go beyond the bounds of statutes but the terminology of a statute can usually be stretched or twisted as the occasion demands. Within the bounds of a general law, a high authority, the king-in-council or an individual department, to make appropriate rules and regulations there is a good deal of leeway. Complacency is frequently heard in England that parliament is merely hand-

In the United States there are said to be more than 600 federal agencies which have authority to make rules, issue orders, and frame regulations affecting the liberties and property of individuals and corporations. F. F. Blaché and M. E. O'Leary, *Administrative Legislation and Adjudication* (Washington, 1934)

back to the crown the powers which it battled for centuries to take away from the king. The answer is that giving power to the crown does not mean restoring authority to the king for the crown is now the servant of parliament. Whatever authority parliament delegates to it may be taken away at any time. Incidentally it should be mentioned that while the court in Great Britain cannot declare any act of parliament unconstitutional they can and do invalidate orders in council or departmental regulations if they find that those who issue them are exceeding their authority.<sup>1</sup>

Great Britain and the United States have also prided themselves on the absence of what is known in the countries of Continental Europe as administrative justice—in other words adjudications made by administrative agencies rather than by the regular courts. But both countries have been building up an elaborate system of administrative justice in recent years. In the United States such bodies as the interstate commerce commission, the federal trade commission and the federal communications commission hold hearings and reach decisions which impose penalties. They order some corporation to cease and desist from doing this or that, or they take away a radio station's license or do other things which constitute a deprivation of property. Usually to be sure what they do is in the public interest, but it is none the less a dispensing of justice by the administrative not by the judicial authorities. The same is true in Great Britain. Various administrative agencies receive complaints, hold hearings and do not their decisions and enforce their penalties. In many cases there is no right of appeal to the courts such as is usually (although not always) preserved in the United States.

ADMINISTRATIVE JUSTICE

Administrative justice is becoming a feature of modern government because the regular courts cannot do the work. Much of it involves the hearing and determination of highly technical issues quite beyond the competence of the most learned judge—not to speak of a jury. Problems of engineering are often involved or of accounting or of public utility technique. The administrative authorities are experts in

WHY IT IS AS DEVELOPED

The whole subject of administrative legislation is expounded in J. Willis, *The Parliamentary Process of English Government Departments* (Cambridge, Mass. 1933). For criticism of it see C. M. Chen, *Parliamentary Operation of Delegated Legislation* (New York, 1933).

For a full discussion of this subject see J. H. Dickinson, *Administrative Justice in the History of Law in the United States* (Cambridge, Mass. 1927).

these fields, which the regular judicial authorities are not. Moreover the grist of controversies arising under the administrative regulations is so large that if the regular courts were called upon to settle them the whole judiciary would have to be trebled or quadrupled in size. That solution of the problem would not be an economy nor would it make the system more satisfactory.

Many years ago Walter Bagehot wrote in one of his facile epigrams that a minister's business is not to work his department but to see that it worked. That is a self-evident truth. A newly appointed minister takes charge of a great department like the British colonial office, with jurisdiction extending to the ends of the earth. He is chosen for this post by the

THE AMATEUR  
AT THE TOP

prime minister not because he knows anything about colonies but because he is an old party war horse or a nimble debater on the floor of the House, or because someone is needed in the cabinet from the northern counties, or for some other such reason. Between attendance at sessions in parliament, going to cabinet meetings, keeping all manner of public engagements, and joining in the London social whirl he has an hour or two a day at his desk to master the problems of a world wide commonwealth. How does he manage to do it? The answer is that his staff of permanent subordinates, the bureaucracy of the civil service are the ones who do it for him.

In a word the minister's function is not to do the job but to see it done. That, of course is the task of every great administrator whether in public or in private business. The British minister is responsible for getting this work done right, and he may be called to account by the House of Commons at any time, but the work of his department calls for expert skill—and the minister is not an expert. He lays no claim to that qualification. In nine cases out of ten he has no professional qualifications for the technical responsibility to which he is assigned.

HIS FUNCTIONS.

The British war office has been headed at times by a philosopher or a journalist, the admiralty by a merchant or a barrister and the board of trade by a university professor. One would suppose that in the treasury at least there would be a minister familiar with the intricacies of public finance. But no—the chancellors of the exchequer have often been lawyers country squires, or professional politicians. A young man must pass an examination in arithmetic says Sir Sidney Low before he can hold a second-class clerkship in the treasury but the

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chancellor of the exchequer may be a middle aged man of the world who has forgotten what little he ever learned about figures and is innocently anxious to know the meaning of those confusing little dots when first confronted with the treasury accounts worked out in decimals.<sup>1</sup> Indeed it has sometimes been said that the best qualification for a cabinet position in Great Britain is that the minister shall know nothing at all about its duties. In this connection one recalls the advice which Sir Joseph Porter K.C.B. first lord of the admiralty gave to his subordinates in Gilbert and Sullivan's *Pinafire*

Stick close to your desks and never go to sea  
And you all may be Rulers of the Queen's Navy!

This does not mean however that members of the British cabinet are men of mediocre attainments. The successful minister indeed must be something of a superman. He must be persistent and resourceful otherwise he would never have risen so far in English politics. He must have a knowledge of public affairs. He must be able to think straight and to express himself clearly for almost daily he will be called upon on the floor of parliament to answer questions and make explanations. He must be able to decide things quickly and be right at least half the time. He must be able to sift good advice from bad when he hears it. And he must be one who is able to delineate clearly the general lines of departmental policy letting his subordinates supply the technical skill that is needed to carry these principles into operation. In matters of routine and detail this means according to one critical observer that unless he is either a self important ass or a man of quite exceptional grasp power and courage (and both of these types are uncommon among successful politicians) he will in ninety nine cases out of a hundred simply accept their view and sign his name on the dotted line.

In the nature of things a minister's subordinates have him at their mercy. They have had more experience than he and sometimes have more vigour of mind. Whatever we have tried with a minister before and know the species. Which ever way he turns they will have arguments objections precedents and suggestions—all made ready for him. When they present any matter for his consideration there is

<sup>1</sup> See e.g. Low, *The Government of England* (New York, 1917) pp. 31-3.  
R. May, *Ministerial Life in Great Britain* (3rd edition, London, 1933) pp. 55-56.

usually only one course for the minister to pursue unless he is prepared to spend his or her time in studying all its implications. And if he tried to do that he would have no time for anything else. Consequently the influence of the permanent officials upon the minister is as to be automatically controlling except to a man of commanding power and long administrative experience with a prodigious capacity for work.

Englishmen see nothing anomalous in placing untrained laymen at the head of departments which have administrative problems of a highly technical sort to handle. Initial unfamiliarity with the work is no barrier to appointment. When Lord Palmerston took the colonial office under his wing many years ago he said to his assistant "Just come upstairs for half an hour and show me where those confounded colonies are on the map." It is not the Anglo-Saxon theory of government that a major-general should be secretary for war or that an admiral should be first lord of the admiralty. On the contrary, it is deemed virtually essential that these highly professionalized departments should have civilians at their head.

The same opinion is generally held, and the same practice followed, in the United States, but not in the chief countries of Continental Europe. In England the doctrine of amateur ministerial control is extended broadly to all the departments, and this has generally been true of the government at Washington, although in recent years there has been a tendency to depart from it. In the United States there is a growing disposition in certain quarters to insist that the men whom the President chooses for certain cabinet positions shall have some vocational qualifications for the departmental work which they are expected to do—for example, that the secretary of agriculture shall be a dirt farmer and the secretary of labor someone who has had a close affiliation with organized labor.

These demands betoken a failure to grasp a sound maxim of political science, namely, that the work of experts should always be supervised by laymen. When an expert supervises the work of experts there is almost certain to be disagreement, for it is in the nature of experts to disagree. It is also their inclination to be unfriendly to new and unusual ways of doing things. Experts like to keep things running in

THE  
MINISTER AND  
WASHINGTON  
PRACTICE  
COMPARED.

IS PRO-  
FESSIONALISM  
DESIKABLE  
AT THE TOP

the ways to which they have become accustomed. Gladstone once said that he could not remember a single administrative reform which the experts of the civil service did not oppose when he first suggested it. The idea that the secretary of agriculture ought to be a farmer moreover suggests an erroneous idea of what this official is supposed to be and to do. He is not chosen to look out for the interests of the American farmer but for the interests of the American people. The chancellor of the exchequer at Westminster does not represent the bankers of England but the people of England. The chief qualification of a department head in any country is that he shall be ready and able to realize the interests of the whole people not that he shall be someone who will devote himself to promoting the interests of a particular class.

The English have held firm to this principle. In each department the minister and his highest subordinates are strictly political officers. They hold their posts so long and only so long as THE POLITICAL HEADS IN GLA D their party remains in power. When a cabinet goes out of office they go with it. They bear to the prime minister a relation not widely different from that which the secretaries and assistant secretaries in the national departments bear to the President of the United States inasmuch as the tenure of each is bound up with that of the whole administration.

But the subordinate officials who make up the permanent civil service are in a different position. They are non political. Hence they do not lose their positions when a cabinet is turned out of office. If the House of Commons has any fault to find with the conduct of a permanent official in any department it turns upon the minister although he may not deserve the blame. Conversely if there is any credit being passed out for the conduct of a department the minister gets and takes it all although he may be similarly undeserving of it. So far as responsibility is concerned the minister is the whole department. A clear distinction should therefore be made between the *political* and the *permanent* staff of an English department. The former provides the democratic element in administration the latter the bureaucratic. Both are essential—one of them to make a government popular the other to make it efficient. And the test of a good government is its successful combination of these two qualities.

The officials who make up the *permanent* staff of the English ad

administrative departments are known by a variety of titles: ministers, **THE POLITICAL STAFF** undersecretaries, parliamentary secretaries, financial secretaries, civil lords, junior lords, and what not. **IS SMALL.** The chancellor of the exchequer, for example, has with him in the treasury not only a *first lord* who is its titular head, but several junior lords, a parliamentary secretary, a patronage secretary (who serves as chief ministerial whip in the House of Commons) and a financial secretary. The secretary of state for foreign affairs has as his chief political coadjutor a parliamentary undersecretary in addition to a permanent undersecretary whose position is not political. These lesser lights are members of the ministry, although not members of the cabinet. All of them are political officers with seats in parliament, and they go out of office when the cabinet resigns.

But this political staff, comprising fewer than a hundred members in all, forms a very small proportion of the entire administrative personnel. Many times more numerous is the permanent staff, officially known as the permanent civil service, or by its critics as the bureaucracy. **WHAT THE PERMANENT OFFICIALS DO** These officials are not politicians and do not sit in parliament. They are selected, appointed, and promoted for their administrative capacity alone. They must take no part in political campaigns. Public administration is their life work. Cabinets and parliaments come and go, but like Tennyson's brook the permanent staff keeps placidly on its way. Numbering nearly half a million, and ranging from high administrative officers down to typists and clerks—these men and women collect the revenue, keep the accounts, compile the reports, enforce the laws, maintain the public institutions, and translate policy into action throughout the realm. Together they make up the civil service of Great Britain, entrance to which is by competitive examination, promotion on a basis of merit, and aloofness from politics the condition of permanent tenure.

### THE CIVIL SERVICE

The story of the British civil service ought to have at least a paragraph or two in every book on the science of government, for it teaches some instructive lessons.<sup>1</sup> The story begins with the tribu-

<sup>1</sup> It was originally named the *civil service* to distinguish it from the *military service*. The best outline of its development is that given by Robert Moses in his *Civil Service of Great Britain* (New York, 1914).

lations of the British East India Company more than two hundred years ago. This great commercial organization with its numerous trading posts in the Orient had to employ large numbers of young men as traders, bookkeepers and clerks. The company paid good wages and what was more its employees were able to earn additional income by dipping into trade on their own account. Some of them made large sums in this way. So the idea of getting to India earning a good salary there and perhaps a fortune by speculation as well—that prospect appealed to many thousands of young Englishmen in the early years of the eighteenth century. The quest for company clerkships in India became so intense that the applications far exceeded the vacancies. And what happened is what might have been expected under such circumstances. Influential stockholders and others began to bring pressure upon the company's higher officers in order to have their own sons or nephews appointed. Incompetents many of them were but paternal influence was often effective in their behalf and hundreds of younger sons hid themselves off to India ostensibly to serve the company but in reality to shake the pagoda tree for their own benefit.<sup>1</sup>

ORIGIN OF  
THE BRITISH  
CIVIL SERVICE

THE EAST  
INDIA COM  
ANY

Here was the spoils system in its most obnoxious form that is in a companionate marriage with nepotism. The whole service in India began to be demoralized and the higher officials of the company sent home complaints on every ship. In sheer self defense therefore the directors of the company were forced to devise a plan whereby all applicants would be required to undergo a period of training before being sent to India. For this purpose a training school was established at Haileybury and there the unfit were weeded out. Haileybury became the only door to appointment and no one was allowed to enter the company's Indian service until he had attended at least four terms and passed the prescribed examinations. Having a great excess of applicants for admission the school was able to raise its standards to a high point higher indeed than those of Oxford or Cambridge.

THE HAILEY  
BURY EXPER  
IMENT

<sup>1</sup> There is a story that Lord Clive when he managed the company's affairs in India made this practice meet these young fortune hunters named only on their arrival. Asking him in turn how much he expected to require Clive paid the new men the amount and flogged him back to England.

One eminent scholar who later became a professor at Oxford thus spoke of his own experience at Haileybury: "I soon discovered that if I wished to rise

Then people began to notice that the East India Company was getting more than its share of the best young brains in the United Kingdom and its extraordinary success in building up a great commercial empire was commonly attributed to its high standards of selection.

Meanwhile however the number of political (as distinct from commercial) posts in India grew with the extension of the company's

THE CHANGE  
OF 1853

territorial interests and public opinion in England began to rebel against a monopoly of these appointments by a single training school under the control

of a commercial company. In 1853 therefore parliament abolished the company's right to make these appointments and provided that all subordinate political offices in India should be filled by the crown from an eligible list based on open competitive examination, with no attendance at any training school required. The school at Haileybury was thereupon closed and the competition thrown open to all British subjects within certain age limits no matter where they had obtained their preparation. The adoption of this plan was largely the work of Macaulay the historian and it embodied a step of great importance. It paved the way for the abolition of the spoils system and the establishment of competitive examinations in all the home departments of British administration. Reformers argued that a plan which was working so well in India ought to be given a trial at home. Their agitation succeeded and civil service examinations were gradually established for all branches of the British administrative service.

The spoils system is commonly thought to be of American origin with President Andrew Jackson as its chief provenitor. But the

THE SPOILS  
SYSTEM IS NOT  
OF AMERICAN  
ORIGIN

spoils system is not a native son among American institutions. Long before it appeared on this side of the Atlantic it was the custom in Great Britain to look upon appointments to well paid public offices

as the legitimate rewards of partisan service. The spoils of victory were distributed among the personal and political friends of the ministers in Walpole's day or even earlier. At the middle of the nineteenth century members of the House of Lords were so successful in getting their impecunious relatives on the public payroll that John Bright once referred to the civil service as the outdoor relief department of the British aristocracy.

Above the level of an ordinary student I had a task before me compared with which my previous work at Oxford could only be regarded as child play.

Members of parliament who supported the ministers were allowed to recommend officials in their own constituencies and these place men sometimes bulked so large among the voters of the decayed boroughs that they virtually controlled the elections<sup>1</sup>. Appointments were for no definite term hence removals could be made at any time. So Andrew Jackson and his friends did not invent the spoils system they merely transplanted an old world institution to a new soil. But unlike most transplantations this one took root and grew luxuriantly in the new environment. In time it became one of the most noxious weeds in the garden of American politics.

ITS EARLY  
VOGUE IN  
ENGLAND

The first civil service competitions were established in England shortly after the middle of the nineteenth century. The initial British Civil Service order in council did not go very far however and there were numerous flaws in it. The examinations for example were to be in accordance with the specifications of the department concerned and these were often expressed in a narrow or pedantic way. But step by step the law was improved and the powers of the civil service commission increased until eventually the principle of fair and open competition based upon broad academic preparation was extended to virtually all the non political positions in the national service.

THE FIRST  
BRITISH CIVIL  
SERVICE  
ORDER IN  
COUNCIL  
(1855)

Today all the permanent officials and employees in the public offices of Great Britain with a few exceptions are chosen under civil service rules. The exceptions include those officials whose work is of highly specialized or confidential nature such as the permanent undersecretaries the assistant secretaries the chiefs of bureaux or branches and the principal clerks as they are called. These officials are not selected by competitive examination but in nearly all cases are promoted from lower positions in the department concerned. Exceptions are also made in the case of employees whose work is of an entirely routine character requiring no particular qualifications such as porters and janitors. The examinations for all other positions are conducted under the auspices of a civil service commission composed of three members who are appointed by the crown. Its

THE PERMANENT  
SYSTEM

<sup>1</sup> In one borough where count was made it was found that no hundred and twenty-five hundred others had obtained appointments through the influence of a single member.

work however is subject on all matters to the approval of the treasury department. The commission's chief functions are to examine candidates and to certify the results. It has nothing to do with classifying positions, fixing salaries, determining promotions or administering discipline.

The whole civil service, irrespective of departments, is divided into grades or classes and a separate examination is provided for each. A candidate does not apply for example to be appointed to a clerkship in the foreign office or in the ministry of health. He takes the general examination prescribed for all the higher clerks and if he stands highest in the results he gets first choice as to the service which he will enter. It will be noted accordingly that the civil service examinations of Great Britain, unlike those commonly held in the United States, have no relation to the particular branch of administration which the applicant hopes to enter. They are distinctly academic in character and cover a wide range of university subjects (languages, history, mathematics, natural science, philosophy, political science, and so on) from which the applicant is permitted to elect a certain number.

The standards are high and the competition for the better posts is very keen. In the case of some positions it is virtually impossible for anyone not a high ranking university graduate to secure a place near the top of the list. These examinations are probably the stiffest that exist in any country. In the case of the lower grades the examinations are not so difficult and may be passed with credit by those who have had a good secondary school education. But they are severely selective because of the keen competition. This competition does not seem to be lessened by the fact that an age limit is imposed on all candidates. This differs in the various grades but it is fixed in such a way that young men and women in order to enter the service must take the examinations soon after graduating from school or university. In the case of university graduates the age limit is twenty-four. Thus there is no provision in Great Britain (as in the United States) for admitting to the civil service examinations middle-aged men and women who have failed to make headway in private vocations. The British civil service is a career which one must enter, if at all, at an early age. This limitation facilitates the system of promotions and eliminates most of the pressure which would otherwise



come from politicians for the appointment of their needy friends.

Writers on the science of government have rightly emphasized the important difference between the English and American methods of examining candidates for classified positions.

In the United States every civil service test is adjusted to the particular position that is to be filled. The tests for clerks in the postal service for example are quite different from those given to applicants for clerical positions in the state department. It is not general education but special qualifications that the civil service authorities in the United States seek

to ascertain. Hence the tests are specialized, practical, not academic. And if the appointee is to spend his entire life in a small position doing a particular form of work there is much to be said for the American plan. But if his initial appointment is regarded merely as a starting point from which he expects to rise by promotion, there is much less to be said for it. Indeed, the outstanding defect of the American plan is that it tends to draw into the public service those mediocre men who can pass a routine test for a subordinate position but who lack the general capacity to rise. They are in as broad epochs of accountants of dictation or typists and are reasonably well qualified for such work but when it comes to placing a bureau chief from a whole roomful of them there is usually no one whose general education and versatility qualifies him to be considered for the higher post.

Public opinion in America so far as it relates to civil service examination is strongly inclined to emphasize the specific and concrete and practical. Americans have a belief that the test should be adapted to the job. It would be hard to convince the American congressman that a college test such as we use for graduation and honors in our colleges and universities would be the right thing for admission to the public service. Most of his proposals to himself would be a pool of young men. Yet it has been demonstrated over and over again in all branches of the public service that men whose education is broad and general do better and rise more rapidly than those whose competence extends to a special line of work. The American system to sum it up does not articulate well with the system of education in schools and colleges but prefers to accept general mediocrity for the sake

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of the special qualifications while the English system by recruiting directly from the regular educational institutions disregards special training and goes out for *general intellectual attainment*

A cogent defense of the English point of view was set forth in an official report some years ago. We regard the existing scheme

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LISHMEN LOOK  
AT THE  
PROBLEM

it said as designed to test the results of university education in general and not the results of a special education preparatory to the public service. It would no doubt be possible to construct a scheme

of examination comprising only subjects directly useful in the home civil service another such for the Indian civil service another for the foreign office and so forth. But we are agreed that the examinations should be a test of general rather than specialized ability and education and that it should be a matter of selecting under the existing scheme of national education those candidates who have used the best talents to the best advantage under that scheme. We consider that the best qualification for a civil servant is a good natural capacity trained by a rational and consistent education from childhood to maturity. We consider that the first requisite for a successful competition is a good field of candidates and that such a field can best be obtained by adapting our scheme to the chief varieties of university education so that candidates while working for university honors will be at the same time preparing themselves to join in the competition if when the time comes they are attracted to it. We do not wish candidates to adapt their education to the examination on the contrary the examination should be adapted to the chief forms of general education. We consider it highly important that candidates who enter this competition and are successful should be at least as well qualified for other non technical professions as if they had never thought of it.<sup>1</sup>

In 1929 a royal commission known as the Tomlin Commission was organized in Great Britain to report on the structure and

THE TOMLIN  
COMMISSION

organization of the civil service the conditions of service the remuneration paid to the officials, the question of ex service men and the retirement arrangements. Like preceding commissions which had dealt with questions of civil service in Great Britain this one was composed of laymen representing various points of view in relation to the subject. Its final report was issued in July, 1931.

*Report of the Committee on Civil Service (1917)*

Generally speaking the report was conservative in its findings and recommendations<sup>1</sup>. This was perhaps to be expected in view of the fact that the members of the commission were selected from sources friendly to the government. The commission found the British civil service system adequate and satisfactory on the whole. Existing methods of recruiting the personnel were commended and the standards of remuneration were endorsed in the light of prevailing wage levels. Some minor improvements however were suggested with respect to salary schedules and a recommendation was made that a contributory pension system be substituted for the existing non-contributory allowance arrangements. The latter would apply to new entrants only. The commission also endorsed the practice of maintaining departmental councils made up of higher and subordinate officials for the adjustment of service difficulties arising within the departments.

Once appointed to the civil service in Great Britain an official holds office during good behavior or until he reaches the age of sixty when he may retire on a pension. There is no danger that he will be removed when a ministry changes. It is an essential of good behavior however that he shall abstain from all active participation in politics. He is free to vote but not to serve on an election committee or to canvass for votes. He is forbidden to address political gatherings or otherwise to make an open display of partisanship. But members of the civil service are permitted and even encouraged to join a national association of public employees and they are provided with a regularly and officially recognized channel for the presentation of their grievances.

Promotions in the British civil service are made on the basis of seniority, service records and the appraisal of general ability. In the lower grades there are promotional examinations to test this ability; in the higher grades the appraisal is made by the department head. In the larger departments there

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PROMOTIONS.

<sup>1</sup> Report of the Royal Commission on the Civil Service (1922-1931) cited throughout this book as Cmd 3707. For criticism of this report see W. A. Robson, Herman Fisher and others *The British Civil Service* (London, 1931).

At the option of the official this limit can usually be extended to sixty-five. By means of departmental councils and a national council. For an explanation see Herman Fisher *The British Civil Service* (London 1927) pp 77 ff. also the pamphlet by Morris B. Lamb, included in the bibliography at the end of this chapter.

are promotional boards which prepare the ratings and lists. These are submitted to the department head who makes his recommendations from them. But before they are put into effect these recommendations for promotion must be certified by the civil service commission and approved by the officials of the treasury department. In this way virtually all favoritism in promotions has been eliminated.

Now the following question will no doubt suggest itself to American readers: What is there to prevent an incoming English ministry from abolishing a large number of positions, thus throwing members of the civil service out of office and creating new positions exempted from the examinations for the benefit of the new ministry's own political friends? There are no constitutional

barriers to such an action. No court would have authority to reinstate the dismissed officials. But the tradition of permanence has now become so firmly entrenched that no new ministry would dare assail it. Every intelligent Englishman is aware that the continuity of administrative work would be utterly impossible under a system of ministerial responsibility if the non-political staff went in and out with every change of ministry. In the United States the spoils system was able to rise and flourish for a long time because every national administration is bound to stay in office for at least four years.

But in England a ministry has no minimum tenure. It may take office today and find itself overturned within a few months. Obviously it would never do to make the continuity of administration subject to interruption at any time. And no sensible man would accept a subordinate post in the government service if he knew that he might be ousted within a week, a month or a year. Permanence of tenure on the part of the administrative staff has been established in Great Britain because no other arrangement would be workable under the system of ministerial responsibility. The same permanence as will be seen later has been established in France because changes of ministry are even more frequent there than in Great Britain. If a parliament desires complete freedom to turn a cabinet out of power at any moment it must make some provision whereby the routine work of administration will be carried on without frequent shocks of interruption.

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The association between a political staff which may change at any moment and an administrative staff which does not change—this association has some important consequences. It provides parliament through the ministers with expert counsel on every question that comes up. We often hear it said that the Congress of the United States should give greater heed to the opinions of the technical experts in Washington: that in enacting a tariff law for example it should defer to the advice of the tariff commission; that in railroad legislation it should be guided by the technical skill of the interstate commerce commission; and that in dealing with the farm relief problem it should seek guidance from the experts in the department of agriculture. This may be quite true, but the practical difficulty lies in the absence of any provision for close contact between the leaders in Congress and these men who have the specialized knowledge. In the absence of cabinet responsibility to Congress they are kept at arm's length apart.

RELIANCE ON  
EXPERTS IN  
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IN AMERICA

This situation is unfortunate from both angles, because the civil service official who is not a member of the legislature sees only one aspect of his problem; the same is true of the legislator who has had no experience in administration. Seeing the problem from different angles they often disagree and since Congress has the ultimate power its view prevails. And indeed it is essential that the ultimate decision on any question of public policy shall rest with the legislative body. But it is equally essential to the successful working of democratic government that public policies shall not be decided without consulting the men whose function it will be to carry out such policies after they have been determined.

In England the men who execute the laws have a substantial share in the making of them. There has been some complaint in fact that they have too much influence upon the making of the laws. Public bills introduced into parliament by the ministers are put into form by the permanent officials of their departments. The provisions of such measures are largely the result of departmental experience. It is true of course that the ministers assume responsibility for these bills and assume the task of explaining and defending them in parliament. For it is an unwritten rule in parliamentary debates that no mention shall be made of the permanent officials either by way of praise or of criticism even though it be known to

IN GLASS  
THERE ARE NO  
CHECKS AND  
BALANCES

everybody that they not the ministers have put the measure into form So far as parliament is concerned these subordinate officials are non-existent No minister ever takes shelter behind the staff of his department

Parliament according to one of its critics is a tool in the hands of the minister and the minister is a tool in the hands of the permanent officials<sup>1</sup> This is a rather exaggerated way of putting it But even an exaggeration may perform a useful service by sharply calling attention to a distinctive feature—as this one does—which is that laymen in British government have all the leadership while experts have most of the power So long as the government of Great Britain is conducted by men and not by supermen this will inevitably be the case The work of such departments as the foreign office the home office the colonial office the treasury not to speak of the versatile ministry of health involves an enormous amount of detail These details must be turned over to subordinates and reliance must be placed upon them But details lead to precedents and precedents crystallize into a general policy It is in this sense that the permanent officials although not supposed to have any share in directing the affairs of state do in fact have a very important share

It is sometimes said that the dependence of the ministers upon their permanent subordinates is accentuated by the practice of asking questions on the floor of parliament As will presently be explained it is the privilege of a member to put notices of questions on the question paper and have them answered by the minister during the hour allotted for this purpose<sup>2</sup> Now the data for answering these questions and even the answers themselves are prepared by his office and handed to the minister in ready typewritten form Necessarily so for if a minister were personally to prepare all the answers which he is required to read in the House he would have time for nothing else So he takes what is given to him Moreover when he has a speech to make his civil service coadjutors round up the facts and the arguments for him—sometimes even write the speech itself In this way it is said he becomes the mouthpiece of his official subordinates

IS THE MINISTER CONTROLLED BY HIS SUBORDINATES.

PARLIAMENTARY QUESTION "AND THEIR RELATION TO THIS MATTER

Here again it is easy to exaggerate. The British minister when he appears on the floor of the House to answer questions or make a speech is a good deal more than a sluiceway through which the brains of his subordinates are permitted to get regular exercise. The sheets which he holds in his hand may have been prepared for him, but the ideas are usually his own or at least they are colored with his own convictions. And when a vigorous personality—like Winston Churchill or Anthony Eden—takes hold of a department one can be certain that secretaries and undersecretaries are providing them with neither the substance nor the style of their parliamentary deliverances. Nevertheless the dominant fact remains that the influence of the permanent civil service on the government of Britain is continuous, effective, and one of its most significant features.

In all countries the question whether members of the civil service should be permitted to affiliate themselves with the regular labor unions has proved from time to time an embarrassing one. An act of Congress passed in 1912 permits federal employees to join labor unions outside the regular service with the provision that such affiliation entails no obligation to join in a strike. But in Great Britain since 1927 members of the civil service are forbidden to join any union which include persons other than public employees. The continuance of this prohibition has been vigorously opposed by the Labor party, but thus far it has remained on the statute book. In trade union circles it was hoped that the report of the Tomlin Commission would recommend a repeal of the 1927 provision but it did not do so. Meanwhile however the members of the British civil service maintain various independent organizations of their own such as the civil service confederation and the union of postal employees.

During the years since the close of the World War the adjustment of complaints and grievances within the ranks of the civil service has been delegated to joint local committees or boards. These committees join departmental councils and a national council. Each council is made up of representatives in equal number from among the higher government and the regular civil service staff. These councils each in its own sphere endeavor to adjust grievances concerning pay, promotion, discipline, vacations, overtime work, and so forth. They also promote educational programs for persons in the service. The system of joint coun-

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cils in the British civil service is an offshoot from the Whitley plan which has been applied to various branches of private industry in England

**TECHNIQUE OF BRITISH ADMINISTRATION** In addition to the books listed at the close of the preceding chapter the following will be found useful C T Carr *Delegated Legislation* (Cambridge 1921) W A Robson *Justice and Administrative Law* (London 1928) F J Port *Administrative Law* (London, 1929) C K Allen *Bureaucracy Triumphant* (Oxford 1931) the same author's *Law in the Making* (London 1927) especially chap vi and John Will *The Parliamentary Powers of English Government Departments* (Cambridge, Mass 1933)

**THE BRITISH CIVIL SERVICE: ORIGIN AND DEVELOPMENT** Dorman B Eaton *The Civil Service of Great Britain* (New York 1880) and a volume by Robert Moses bearing the same title (New York 1914) give full accounts of the system in its earlier stages W A Robson *From Patronage to Efficiency in the Public Service* (London 1927) is also useful in this connection A volume of lectures describing its various aspects at the present time was published some years ago under the title *The Development of the Civil Service* (London, 1927)

**PRESENT ORGANIZATION AND WORKINGS** N E Mustoe *The Law and Organization of the British Civil Service* (London 1932) is the latest comprehensive study Mention should also be made of Herman Foner *The British Civil Service* (London 1927) and attention should also be called to the discussion of the subject in his *The Policy and Practice of Modern Government* (7 vols., New York 1932) Vol II pp 1163-1514 A concise account of the system, its history and present workings is that given in F A Ogg *English Government and Politics* (2nd edition New York 1936) chaps x-xi Llewellyn there is a good outline in Sir John A R Marriott *Mechanism of the Modern State* (2 vols Oxford 1927) Vol II chap xxvii A recent volume entitled *The British Civil Service* by W A Robson and others (London 1937) finds considerable room for criticism in the existing arrangements Class preference and isolation from non-bureaucratic life are particularly commented upon

**COMMENTS AND COMPARISONS** An account of British Civil Service Personnel Administration may be found in a pamphlet bearing that title by Morris B Lamb which was reprinted from House Document No 60, 70th Congress 2nd Session and issued by the Government Printing Office in 1929 Materials for comparison with other countries are printed in Leonard D White *Civil Service in the Modern State* (Chicago 1930) and in his *British Civil Service* (New York 1935) as well as in another volume by the same author (with others) entitled *Civil Service Around the World* (New York 1935) Harvey Walker *Transnational Employment in Great Britain* (New York, 1935) is excellent and covers a



wider range than its title might indicate Ramsay Muir's volume on *How Britain is Governed* (3rd edition London 1935) contains a trenchant criticism of the way in which the civil service has developed into a bureaucracy (pp 37-80) The chapter on Government by Amateurs in Sir Sidney Low's *Governance of England* (pp 199-217) is both interesting and suggestive Samuel McKelvey's *The Romance of the Civil Service* (London 1934) may also be mentioned Instructive articles on various phases of the civil service appear from time to time in the journal entitled *Public Administration*

DOCUMENTS Among public documents are the *Fifth Report of the Royal Commission on the Civil Service* (1914) portions of which are printed in F M Sait and D P B rows *British Politics Today* (New York 1925) chap 1 the *Report of the Committee Appointed by the Lord Chancellor of His Majesty's Treasury* (1911) the *Final Report of the Treasury Committee on the Re-structure of the Civil Service* (1919) the *Report of the Joint Committee on the Organisation of the Civil Service* (1920) and the *Report of the [Tomlin] Pay Committee on the Civil Service* (1929 1931)

The Whitely council yet mentioned in Leonard D White *Whitely Council: the British Civil Service* (Chicago 1933)

For a comparison of the British civil service with that of France reference may be made to Walter R Shap *The French Civil Service: Bureaucracy in Transition* (New York 1931) and for a comparison with American practice the most useful book is Lewis Myers *The Federal Service* (New York 1927) Other references may be found in Sir H Gier *A Bibliography of Civil Service and Personnel Administration* (New York 1935)

## CHAPTER VIII

### THE HOUSE OF LORDS

The American who handed the Romans the two consuls makes it desirable that there should be two chambers that neither of them may be exposed to the corrupting influence of undivided power even for the space of a single year -- *John Stuart Mill*

The British parliament consists of two chambers known as the House of Lords and the House of Commons. The House of Lords is commonly spoken of as the second chamber but historically it is the first being the oldest legislative body in the world. It has had a continuous existence, with a single brief interruption for more than ten centuries. In a previous chapter something was said about the origin and early history of the Lords: it grew out of the Great Council which in a way was the successor of the Saxon Witan. Its original members were the magnates of the realm: the great landowners, bishops and barons. The king on his throne presided over them. There was a time when they had all the powers of parliament on the principle that those who owned the land should rule it. But democracy fought its way up the centuries and the Lords gradually lost most of their legislative strength. Even at the height of its power the House of Lords was not a very active or aggressive body. During the great crises of English history according to Gilbert and Sullivan it did nothing in particular and did it very well. That is a sure way for a legislative body to lose authority.

#### THE PEERAGE

To understand the composition of the House of Lords it is necessary to know something about the peerage: what it is and what it is not. On this subject of peers and peerages the average American has rather cloudy notions. He is aware that there is a certain element in the British population known as the nobility the members of which sometimes marry American heiresses and he has observed that they have a variety of titles --

duke earl marquis viscount, baron and so forth But what these ranks imply or which has precedence over the other he usually does not know nor does he very much care In the minds of most Americans the peerage is not an institution but an anachronism

Yet the student of English government cannot so lightly brush aside those princes and lords who are but the breath of kings for both the peerage and the House of Lords have woven themselves deeply into the British political system The peerage constitutes the top stratum in British society were it to disappear the social hierarchy of the United Kingdom would have to be recast The House of Lords is an integral part of the British political and judicial systems its composition and powers must be understood by anyone who desires to know how the laws are made and appeals decided Thoreau Carlyle once said of the Corn Laws that they were too ably to have a chapter so he omitted them But he did not thereby to tribute much to the enlightenment of his readers on fiscal policy We would think poorly of an Englishman if I write a treatise on American government with no mention of many Hall the spoils system the new deal or the Federal Reserve merely because he regarded these things with averted eyes by ignoring The importance of political institutions is not diminished by the British peerage

The term peers originally meant equally different ranks is a body which contains men and women of the royal It is sometimes said that the principle gradation in the royal family constitutes the first and highest The princes the peerage but this is not strictly true at all But the eldest son of as such are not members of the peerage by birth and becomes Prince of a British king is Duke of Cornwall The king's second son (when he Wales by a bestowal of the title Duke of York and still younger sons has a second son) becomes Duke of Gloucester and so on It is as dukes and not have other ducal titles conferred on them members of the royal family belong to the as princes that they are members of the peerage of the United Kingdom As peers of the blood royal how ever they outnumber all other peers So in reality there are only five regular gradations in the British nobility—dukes marquises earls viscounts and barons

The rank of duke made its first appearance in 1337 when the

Black Prince became Duke of Cornwall Dukedoms have always been given sparingly and today there are fewer than thirty dukes in the entire peerage It is the highest rank that can be conferred upon any one outside the royal family Next come the marquises, of whom there are twenty seven the earls who number about one hundred and thirty the viscounts who form a relatively small element (about seventy) and the barons who are the most numerous element over four hundred and fifty in all These figures by the way do not include members of the Scottish and Irish peerages Taken all together the House of Lords has about 750 members

All ranks in the peerage (with the exception of the law lords and the ecclesiastical dignitaries as will be explained in a moment) are hereditary The eldest son of a peer becomes a peer on his father's death until then he is a commoner an ordinary citizen with no special privileges The younger sons and daughters also pass into the ranks of ordinary citizenship although in many cases they bear courtesy titles Most

The rank of a lord goes back to Saxon times and that of baron to the Norman period The rank of marquess is from 138 and that of count from 144. No new ranks in the peerage have been created though there are nearly 500

The courtesy titles add to the utter confusion. Head boy: the dukes of Lord John Russell Lord High Chamberlain and others in the House of Commons and lords why many with such titles are sitting in the lower House. It means that these gentlemen young sons marry with courtesy titles. But what are courtesy titles. The matter may be explained in this way. The eldest son of a duke a marquess or an earl (but not of a viscount or baron) usually makes use of one of his father's subsidiary titles as a courtesy title during his lifetime. If time allows he may rise in the high ranks of the peerage has one or more subsidiary titles—some have nearly a dozen of them. They usually indicate the general position of the family in the ancestry of the house. The upper ranks of the peerage. Thus the Duke of Devonshire is also Marquis of Hartington Earl of Bessborough and Baron Cavendish. His eldest son a duke is by courtesy known as Lord Hartington but during his lifetime he is not a member of the peerage and does not have a seat in the House of Lords. All young sons of peers are entitled to the prefix Honorable and by all concerned are used as though you get sons of dukes and marquises are known as Lord John So-and-So or Lord George So-and-So as the case may be. The more general rules as to courtesy titles apply to the daughters of peers except that if from mysterious reasons the daughter of an earl is known as Lady Mary So-and-So or Lady Geraldine So-and-So whereas the brothers have only the prefix Honorable. Perhaps the most familiar courtesy title of the past generation was that borne by Gladstone's colleague the Marquis of Hartington.

of those who constitute the peerage have inherited their rank but new peers are often created by the crown

Special emphasis should be given to the point that there is only one peer for each peerage. Save for the one who holds the title all other members of the family are commoners. And save for the one who inherits the title all of them remain commoners. Thus the great majority of those who are born sons and daughters of peers pass into the ranks of common folk and are assimilated there. This above all things else has differentiated the British peerage from Continental European institutions of the same general type. In France before the Revolution all the children of a nobleman became and remained members of the noblesse. As a result the French nobility grew to be a very large body with a consequent cheapening of its prestige. Likewise it became a caste a privileged order with no overflow into the ranks of the people. In England on the other hand the peerage has never been a close corporation. Men who are born commoners become peers men who are born sons of peers become commoners. This fluidity is its greatest source of strength. Any British subject can become a peer by reason of his own merits if he possesses them. To that extent the peerage is a democratic institution.

#### THE LORD OF PARLIAMENT

Not all members of the peerage are Lords of Parliament. Peers of certain designated categories. On the other hand members who are not hereditary peers have been given seats. Before the union of England and Scotland in 1707 all English peers of higher rank sat in the House of Lords and all Scottish peers in the Scottish upper House. By the terms of the Union it was provided however that what should be elected by the peerage of Scotland should be sixteen members only. The body of Scottish peers which now numbers less than fifty is elected for each parliament by ballot. The peerage of Scotland has disappeared for no additions usually the old Scottish peers however have been added. Thus the Duke of Devonshire is a peer of the United Kingdom and the Duke of Devonshire is a peer of the United Kingdom.

Some of the Scottish peers however have been added. Thus the Duke of Devonshire is a peer of the United Kingdom and the Duke of Devonshire is a peer of the United Kingdom.

have been made to it since the union of 1707. The same is true of the old peerage of England. Nearly all additions during this period of more than two hundred years have been to the peerage of the United Kingdom which was established at the time of the Anglo-Scottish union.

The Irish peerage at the time of Ireland's union with Great Britain (1800) was a large body. To have given all these Irish peers the right to sit in the British House of Lords was not thought desirable, so it was provided by the Act of Union that the whole body of Irish peers should select twenty-eight of their members to represent them at Westminster. This selection is not made as in Scotland for the duration of a single parliament but for life. The only occasion on which the Irish peers meet to select a representative is therefore when one of the twenty-eight dies or becomes disqualified. It was also provided in the Act of Union that the total membership of the Irish peerage should gradually be reduced to one hundred members and by 1921 this had been accomplished. The treaty which established the Irish Free State made no change in the status of the Irish peerage or its representation in the House of Lords, but vacancies in the quota of Irish peers have not been filled since 1922 and it is assumed that none will be filled hereafter. Thus the representation of the Irish peerage in the House of Lords will gradually pass out.

At the present time the House of Lords contains about seven hundred and fifty members, of whom more than six hundred are peers of the United Kingdom, while sixteen are representative peers of Scotland and about the same number are representative peers of Ireland. But the House is not composed of hereditary peers alone. Its membership includes in addition twenty-six lords spiritual, namely the two archbishops of the Established Church (Canterbury and York) together with twenty-four bishops. Among these the bishops of London, Durham, and Winchester are always included; the other twenty-one seats are allotted among the remaining bishops in order of seniority, that is in the order of their appointment to office. When a bishop retires from his ecclesiastical office he loses his right to a seat in the House.

By statute it has also been provided that seven lords of appeal shall be appointed peers for life and have seats in the House of Lords. These lords of appeal are chosen from among the distin-

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THE SPIRITUAL  
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guished jurists of the British empire and unlike other members of the House of Lords are paid an annual salary. The reason for adding this legal element to the membership is found in the fact that the House of Lords is not only a legislative chamber but a court of appeal from the lower courts of England, Wales, Scotland, and Northern Ireland. And since a body of over seven hundred members, most of them with no knowledge of the law, cannot function as a court, it is necessary to have the judicial work of the House performed by men who have had legal training. The functions of the House of Lords as a court are therefore performed by the law lords of the chamber who include not only the seven lords of appeal but the lord chancellor, former lord chancellors, and any other lord of parliament who holds or has held a high judicial office. But these law lords do not form a committee; their sessions are officially sessions of the whole House. In theory any member of the House of Lords is entitled to attend and to take part in the hearing of appeals, but of course the lay members never do.

THE LAW  
LORDS

Peers of any rank may be created by the crown at any time and without any limit as to number. In other words, the creation of new peers is a matter which the crown decides on the advice of the prime minister. Members of the cabinet may and do present names for their premier's consideration. So do others outside the cabinet circle. On some occasions the king has offered a peerage to a retiring prime minister before asking the advice of a new one. A few additions to the peerage are made almost every year. On the other hand, some peerages are extinguished from time to time by the death of peers who leave no eligible male heirs. It is not necessary that there shall be sons to inherit the title; in most cases the peerage will pass in default of sons or grandsons to brothers or even to cousins.

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In some instances women have inherited rank in the peerage and a few women have been made peers in their own right. But none of them has yet been permitted to sit in the House of Lords. On two occasions a bill was introduced to give them this privilege but in both instances the Lords ungalantly defeated it by a slender margin. The rules of succession to any title of nobility depend upon the stipulations contained in the original royal patent which created the peerage. The crown may fix these rules at its discretion, but the succession must follow some method of descent already recognized at law.

WOMEN  
EXCLUDED  
IN THE 19<sup>TH</sup>

A peerage cannot be resigned or relinquished. The heir must accept his title no matter how much he may be disinclined. If however he is under twenty one years of age when he inherits the title he does not take his seat in the House of Lords till he attains his legal majority. In 1919 Viscount Astor tried to get rid of the peerage which descended to him on his father's death because he wanted to continue his membership in the House of Commons and could not sit in both chambers but he found that this could not be done except by a special act which parliament refused to pass. And of course a peerage is not transferable like property by sale or gift. A peerage by grant (that is, an offer of a new peerage) can be declined but not a peerage by inheritance. Occasionally some cousin or nephew of a peer having lived for a long time in America suddenly finds himself the heir to a title. He can evade his new status only by keeping clear of British soil.

The granting of peerages is in part determined by custom but to a larger extent it depends upon the temper of the cabinet with the prime minister exercising a controlling voice in the matter. Custom dictates for example that the prime minister himself or a speaker of the House of Commons on retirement from office shall be offered a peerage. The same applies to ministers who have rendered distinguished public service over a considerable term of years. Thus William Pitt the elder became Earl of Chatham Benjamin Disraeli went to the House of Lords as Earl of Beaconsfield Arthur J. Balfour was raised to the peerage as Earl Balfour and Herbert H. Asquith became Earl of Oxford and Asquith. Distinction in fields other than statesmanship also calls for the bestowal of this honor—in the military and naval service for example. Every student of English history will recall numerous examples such as the Duke of Marlborough the Duke of Wellington Earl Nelson the Earl of Camperdown Viscount Wolseley Earl Kitchener Earl Haig Earl Beatty Viscount Jellicoe and many others. Notable contributions to literature art or science are frequently recognized in the same way as illustrated by the examples of Baron Tennyson Baron Kelvin Baron Lister Baron Avebury (Sir John Lubbock) Viscount Bryce and Baron Passfield (Sidney Webb). And there are not a few who have crept into the ranks of the peerage by reason of large wealth judiciously used. Munificent gifts to hospi-

NO RESIGNATIONS

WHO ARE  
CUSTODI-  
AN RANK  
IN THE PEER  
AGE



tals educational institutions and philanthropic enterprises contributions to the party campaign funds and other forms of largesse have helped to further the ambitions of prospective peers Not in so many cases however as to give warrant for Defoe's sour assertion that

Wealth ho soever got n England makes  
 Lords of m<sup>e</sup>chanics gentle n n of akes  
 Anuquity and birth are needles h<sup>e</sup> c  
 T s impud nce and money makes a peer

New peerages are usually granted on certain anniversary occasions the king's birthday or New Year's Day As a rule the honors are worthily bestowed and the action of the cabinet is generally approved by public opinion although it sometimes happens that an individual name comes in for newspaper criticism Some years ago it was predicted that when a Labor cabinet came into office there would be an end to the creating of new peerages But this proved to be a false prediction Peers have been made with the Labor party in office and quite plentifully<sup>1</sup>

Public criticism has been outspoken during recent years in connection with certain elections to the peerage In one case a proposed creation was roundly criticized in the House of Lords itself and the peer designate is said to have requested that the patent be not issued in this case At any rate it was not issued In deference to the general criticism a royal commission was appointed in 1922 to inquire into the whole matter of bestowing these honors and especially into the rumors that certain honors could be bought by any well-to-do citizen who was willing to pay the price in cash The investigations of this commission disclosed nothing very reprehensible but parliament in 1925 established a safeguard by making it a misdemeanor to give or offer take or ask any gift or sum as an inducement to procure the grant of a title

In addition the royal commission recommended that a committee of not more than three members of the privy council not being members of the government should be appointed to investigate and report to the prime minister upon each proposed recipient of a peerage or other honors before his name could be submitted to the king This committee,

Twenty-one fifth and six years 1929 1931

THE USUAL  
 ATTITUDE

SO HOSTILE  
 CRITICIS  
 A D ITS  
 RESULTS

THE  
 S. F. R. D.

it was provided should particularly inquire as to his party contributions. In the event of the committee reporting unfavorably the prime minister might nevertheless submit the name to the king but must inform His Majesty of the unfavorable report. The recommendations of the royal commission were adopted: a committee of the privy council was appointed and all names proposed for honors are now given a careful scrutiny by it.<sup>1</sup>

Knights and baronets are not members of the peerage although the rank of baronet is hereditary. Knighthoods are bestowed for life only. They are of several categories such as

**KING ITS AND BARONET** Knight of the Order of St. Michael and St. George (K. C. M. G.) or Knight Commander of the Order of the Bath (K. C. B.). A knight uses his given name and surname with the prefix Sir; a baronet does the same with the abbreviation Bart. after his name.

Men who are already baronets or knights are sometimes promoted to the peerage but this is not the usual course. As a rule those who are made peers have had no previous title of honor although they frequently have been members of the House of Commons or have held other public offices. In the great majority of cases a commoner who becomes a peer must be satisfied with the lowest grade that is with the rank of baron but occasionally a commoner of high distinction is made a viscount or even an earl in his initial patent of nobility.

The recipient of a peerage is permitted with certain limitations to choose his new appellation. Very often he takes it from some place

**CHOOSING A TITLE** with which he has been connected by residence or with which he has had some political connection.

Thus Sir F. E. Smith when he became an earl chose the title Lord Birkenhead because he had been member of the House of Commons for Birkenhead. Some retain their family patronymic as Field Marshal Haig did when he became Earl Haig. Provided the title has not been already assumed by some other peer and provided also that by custom no peer below the rank of earl may take for his title the name of a county or county town he has a free choice. The new peer's wife usually helps him decide the matter: it is said and properly so for the wife of a peer like the wife of a commoner is saddled with her husband's

<sup>1</sup> See the interesting discussion of Titles and Honours in W. I. or J. *Manual of Great Britain* (Cambridge 1936) pp. 351-360.

name Here is an opportunity to do something that satisfies both halves of the household A peerage of course does not come out of the clear sky and the future title has usually been discussed and settled in conjugal conclave before it arrives<sup>1</sup>

The grant of a new peerage as has been said may be declined although peerages by inheritance may not, and declinations have sometimes taken place Gladstone afforded a conspicuous example On more than one occasion he was pressed to accept a title of nobility but steadfastly refused ever after retired from public life But his great antagonist Disraeli accepted a peerage because his health prevented him from continuing to bear the strain of leadership in the House of Commons Rank in the peerage carries no salary from the public treasury and members of the House of Lords receive no remuneration for their services But most peers are well to do and many of them figure prominently among the landowners and captains of industry in England To maintain the dignity and manner of living customary among members of the peerage requires a considerable income for even a baron ought to maintain two establishments one in London and another in the country

G. ADSTONE  
AND DISRAELI

REVISED  
P. 183

Members of the House of Lords have various privileges and are under certain disabilities Freedom of speech and freedom from arrest while the House is in session extends to the Lords as well as to the members of the lower chamber For many centuries it has as a rule of law dating back to the Great Charter of 1215 that a peer could only be tried by his fellow peers and hence was not amenable to the ordinary courts When therefore a member of the House of Lords was charged with a serious offense his case was heard and determined by his fellow members in that House The last occasion on which the House exercised in this capacity was more than thirty-five years ago and the privilege is now abolished

Tasted first as well in times as in future Disraeli as has been said how it is known as Earl of Beaconsfield Sir Donald Smith became Lord Strathcona and Mount Royal Baron Bessborough Ignatius O'Brien, 1918 decided that Baron Strathcona would suit his taste but rather Sir Michael Hicks Beach became Viscount St. Aldwyn but better Bertie and John Lubbock deemed their names good enough When a new title is selected the lord's patronymic is retained for the use of the daughters and daughters-in-law The family name of the Bedford is Russell that of the Salsburgh is Cecil that of the Abercrombie is Gordon that of the Norfolk is Howard and that of the Devon is Cavendish

Members of the peerage have no votes at parliamentary elections. Nor with one exception are they eligible as candidates for the House of Commons. The exception (an important one) extends to all Irish peers who are not among the Irish representatives in the House of Lords. Any such Irish peer may be elected from an English (but not from a Northern Ireland) constituency. The disqualification from candidacy does not extend in any case to the members of a peer's family but only to the holder of the title. Even the eldest son of a peer the heir apparent to the title may be elected to the House of Commons during his father's lifetime. But on succeeding to the title he must vacate his seat in the lower chamber. Sons of peers have figured prominently in the Commons on many notable occasions and in some cases have been its leaders.

#### PROCEDURE AND POWERS

The House of Lords meets in its own chamber at Westminster. It is an impressive meeting place the most handsome legislative chamber in the world richly upholstered and dowered with a soft light that filters through the magnificent stained glass windows. There is an air of leisure and luxury about it. The sessions of the Lords are coincident with those of the Commons. When the lower House ends its session the upper chamber does likewise but each House can adjourn separately. Sessions of the House of Lords are presided over by the lord chancellor who is appointed by the crown upon the advice of the prime minister. He sits on a large couch or divan known as the *Woolsack* and puts moun- but he does not have any disciplinary powers. He does not even have the power to recognize peers who desire to speak. When two of them rise simultaneously the House decides if necessary whom it will hear. This restriction of the presiding officer's power dates back to the time when the lord chancellor was not a peer but merely an officer of the king's household. Even yet, as has been said, there is no legal requirement that he shall be a member of the House although he usually is such.

The term *Woolsack* originated in the reign of Elizabeth when a statute was passed prohibiting the exportation of wool from England. The judges of the House of Lords in order to bow their approval of this measure and to emphasize the desirability of creating a home market for English-grown wool, had their bench tufted with it.

The House of Lords meets regularly on Tuesdays Wednesdays and Thursdays Sessions are often held on Mondays also and more rarely on Fridays The sittings do not usually last more than an hour or two and as a rule they are <sup>ITS SESSIONS.</sup> thinly attended Out of the seven hundred and fifty members not more than thirty or forty usually attend except when matters of some importance are to be discussed It is said that more than two thirds of the Lords attend fewer than ten sittings a year Three members constitute a quorum to do business but at least thirty must be present in order to pass any bill In the latter part of the session however when bills come up from the Commons the daily sittings last longer and are better attended The proceedings are traditionally dull although the full-dress debates now and then are of high quality few questions are ever asked there are no estimates of expenditures to be discussed and the recommendations of committees are ordinarily accepted with little or no dissent

On the other hand the rules of the House are so liberal that it is possible for any peer to initiate a debate at almost any time and on any matter of public importance by motion for papers that is offering a resolution and that certain official documents be laid before the House In this a public attention may be drawn to any question and a full discussion may be had in the Lords at a time when the pressure of business in the Commons precludes a longer debate there During such discussions the standards of debate in the Lords are quite up to (or even above) those of the popular chamber for the House of Peers contains a number of good speakers What is more they are men who speak to the point Speeches in the House of Lords are not made for the benefit of the press gallery A peer has no constituents to humor or impress He represents no one but himself Politically the House of Lords is one-sided the Conservatives being in an overwhelming majority There is never any doubt as to the outcome of a vote when party lines are drawn but on most questions the House does not decide that way

The House of Lords has two special powers which it does not share with the House of Commons First it is a supreme court of appeal for the hearing of certain civil and criminal cases, but its judicial work is performed by a very small proportion of its membership as has been shown In the second place it is the body which bears

ITS RULES  
AND ORDERS

CIVIL  
POWERS OF  
THE HOUSE  
OF LORDS

and determines impeachments brought by the House of Commons

IMPEACHMENTS This is an ancient prerogative of the Lords it goes back to the days of the Saxon Witan. Before the development of ministerial responsibility it was a function of great importance inasmuch as it afforded the only means of calling the king's advisers to account. It was through the power of impeachment that parliament managed to acquire its control over the actions of the crown. During many centuries this power was freely used but it has now dropped into abeyance. One can scarcely conceive of a situation under the existing parliamentary system in which it would be necessary to impeach any British official. A vote of the House of Commons requesting his removal from office would be enough for no ministry could deny such a request and remain in office.<sup>1</sup> And if it should be necessary to penalise any public officer otherwise than by removal from office the ordinary courts afford an adequate process.

Ande from financial measures any public bill may be introduced in the House of Lords. Financial measures must originate in the Commons. As a matter of usage however very few legislative proposals except private bills (see Chapter XII) ever get their first reading in the upper chamber.

LEGISLATIVE FUNCTION

INTRODUCTION OF BILLS Nine tenths of the public measures begin their journey in the Commons. The result is that during the early weeks of a session the Lords have almost nothing to do. Then as the House of Commons gets into its stride the bills come up in larger numbers and for a time the peers are amply provided with work. It has frequently been proposed that the cabinet should fairly apportion the introduction of government measures to both chambers thus avoiding idleness at the beginning of a session and congestion at the end but this suggestion has not found favor. There would be little advantage in setting the Lords to work on important measures until after the attitude of the lower chamber has been determined.

#### THE CONTROVERSY WITH THE COMMONS

Until 1911 it was technically the privilege of the Lords to reject any bill even a money bill. But by non-use the upper House had

<sup>1</sup> This of course would not include judges who are removable only on an address or resolution of both Houses.

lost its right to amend any financial measure and in the opinion of many constitutional lawyers it had also lost by non-use its right to reject such a measure—although the Lords themselves had never conceded this loss. As to bills other than money bills there was never any question prior to 1911 that the House of Lords might both amend and reject anything sent up by the Commons. The power of rejection was in fact used on many momentous occasions during the nineteenth century notably in the defeat of the first reform bill (1831) and the second Irish home rule bill (1893). In such cases there was no way in which the Commons could make its will prevail against the opposition of the Lords. To be sure there was one potential method of achieving this end but it was so drastic as to preclude its use on any save the most critical occasions. The method involved the creation of enough new peers to swamp the opposition in the Lords.

REJECTION OF  
BILLS SENT UP  
BY THE COMMONS

THE OLD ARRANGEMENT

Under ordinary conditions when the House of Lords rejected a measure that had been passed by the Commons there was some grumbling in the lower chamber but nothing happened. If the rejected bill was an important government measure introduced by the ministers and passed under their guidance the prime minister could advise a dissolution of parliament and a general election on the issue. This would put the matter before the high court of public opinion for judgment. Then if the people upheld the ministry the Lords were expected to give way which they usually did.

HOW IT  
WOULD

It was not until 1909 that a deadlock between the Lords and Commons arose in such form and assumed such bitterness as to compel the making of a new provision. In the autumn of that year Mr Lloyd George then chancellor of the exchequer in the Liberal ministry brought forward a finance bill or budget which proposed the levy of certain new taxes more particularly some new taxes on land. As these taxes would bear heavily upon the owners of large estates the House of Lords rejected the measure and also defeated various other bills which had been passed by a majority in the Commons. The lower House showed its resentment by adopting a resolution which declared the action of the Lords to be a breach of the constitution and a usurpation of the privileges of the House of Commons. But the Lords stood their ground and the

THE COMMISSION  
OVER THE  
LLOYD  
GEORGE  
BUDGET

prime minister decided to request an appeal to the voters. Accordingly a general election took place in the early days of 1910. During this campaign the question of clipping the wings of the Lords formed an important issue. The Liberals were successful at the polls and having repassed the finance bill in the Commons sent it for the second time to the upper chamber whereupon the Lords accepted the verdict of the country and gave their assent to the measure.

But the Liberals were determined that the relations between the two chambers should be clarified in such way that it would no longer be necessary to hold a general election in order to make the Lords knuckle under. Accordingly a measure designed to limit the powers of the Lords was introduced by the ministers into the House of Commons. This bill contained four chief provisions. *First* it stipulated that money measures when passed by the House of Commons should become law one month after such passage even though the Lords should withhold their concurrence. *Second* it gave a definition of money bills and made provision that in case of disagreement as to whether a bill came within the definition the decision of the speaker of the Commons should be conclusive.<sup>1</sup> *Third* it provided that any other public bill passed by the House of Commons in three consecutive sessions with an interval of at least two years between its first and final passage should become a law on receiving the assent of the crown notwithstanding the failure of the Lords to approve the measure.<sup>2</sup> *Fourth* it enacted that the maximum duration of a parliament should henceforth be five years instead of seven. Parliament has

The definition as follows: Any public bill which in its judgment of the speaker contains only provisions dealing with all or any of the following subjects is the subject of a money bill:— (1) the raising of money by taxation or by loan; (2) the borrowing of money; (3) the payment of money; (4) the raising of money by the sale of the Crown lands; (5) the raising of money by the sale of the Crown jewels; (6) the raising of money by the sale of the Crown's rights of patronage; (7) the raising of money by the sale of the Crown's rights of prerogative; (8) the raising of money by the sale of the Crown's rights of privilege; (9) the raising of money by the sale of the Crown's rights of jurisdiction; (10) the raising of money by the sale of the Crown's rights of sovereignty.

It is stipulated that this provision shall not apply to a measure extending the duration of a parliament beyond its present maximum of five years or to certain other provisions as respects the two-year interval between the first and second passage of a bill. The two-year interval must elapse between the first and second passage of a bill in the Commons. The House of Commons is authorized to direct in any bill that so desirous that the measure shall not be brought into law unless and until it receives the assent of the Lords.



ever can at any time extend its own existence beyond this five year term if an emergency so requires and the very parliament which passed the Act of 1911 did this during the World War—prolonging its own life for nearly eight years and thus giving a good example of what a British parliament can do without having its actions declared unconstitutional

Under the title of the Parliament Bill this measure for curbing the powers of the upper chamber was passed by the Commons and sent to the Lords. The latter hardly daring to reject the bill without offering some constructive measure of reform in its place adopted resolutions embodying an alternative scheme. The ministry thereupon served notice that another general election would be held unless the Lords accepted the bill and this threat was presently carried into effect. Once more the country stood by the Liberals and their allies the Laborites and Irish Nationalists and thus assuring the enactment of the reform measure. Not however without a renewed flicker of resistance from the upper chamber which had to be cowed into submission by a threat to create new peers—as many as might be needed to pass the bill. In the end many of the opposition Lords abstained from attendance and the measure passed by a rather narrow margin amid scenes of intense excitement. The Parliament Act of 1911 embodied the most important change that had been made in the constitution of Great Britain for more than a century.<sup>1</sup>

ITS ACCEPTANCE BY THE LORDS

#### PROPOSALS OF REFORM

Proposals to change not only the powers but the composition of the House of Lords have been made on many occasions especially during the past half century. The British House of Lords is like the Supreme Court of the United States in that any unpopular action is promptly followed by a clamor for a change in its structure or authority. The rejection of various measures during the eighteenth and nineteenth centuries stirred up much popular antagonism among the Liberals but when the Conservatives came forward with a proposal to decrease the hereditary element in the House of Lords by the introduction of life peerages the Liberals did not take kindly to the plan. Again in 1908-1911 when the Lords were in collision with the

PROPOSALS  
OR  
REFORMS  
THAT  
WERE  
REJECTED

<sup>1</sup> A full account of the struggle between the two Houses is given in Emile Albert Lord's *Parliamentary Reform* (New York 1931).

Liberal ministry various other projects of reform were broached.

THE LANS-  
DOVNE PLAN

The most notable of these was the Lansdowne plan which contemplated a House of about 330 members, partly of peers and partly of laymen chosen by a rather complicated process.<sup>1</sup> This was intended as an olive branch to the Liberals in the endeavor to halt the enactment of the Parliament Bill but it was coldly rejected. Other proposals were put forward from various sources and in the end a parliamentary committee or conference under the chairmanship of Lord Bryce was appointed to study them all. It consisted of thirty members drawn in equal numbers from the House of Lords and the House of Commons and representing all three political parties.

THE BRYCE  
PLAN

This conference in 1918 made a long report with some definite recommendations.<sup>2</sup> It recommended that the upper chamber be reduced in size and that it be constituted of two elements one third of the members chosen from the peerage and two thirds by the House of Commons voting according to regional groups. The term of members was to be twelve years with one third of the membership chosen quadrennially. In case of disagreement between this second chamber and the House of Commons it was recommended that the matter be referred to a joint conference made up of thirty members from each chamber. This report met strong opposition particularly against the proposal for settling disagreements by joint conference.

Instead of urging these recommendations therefore the cabinet appointed a committee of its own members to consider the question

THE RO-  
POSED RESO-  
LUTIONS OF  
1922.

and in 1922 five resolutions were submitted to the House of Lords for discussion.<sup>3</sup> But the Lords displayed no enthusiasm for the ministry's plan and it also met with a rather frigid reception in the country at

On hundred peers were to be chosen by the whole body of the peerage one hundred peers were to be appointed by the crown three from the peerage and one hundred and seventy persons were to be elected by members of the House of Commons to give regional groups. Four bishops were to be chosen by the whole body of bishops.

This report is printed in H. L. M. Bain and Lindsay Rogers *The New Constitution of Great Britain* (New York 1922) pp 576-601. A full discussion of its merits and defects may be found in H. B. Lees-Smith, *Second Chambers: Theory and Practice* (London 1924) pp 216-235.

The following were the resolutions:

1. That the House shall be composed in addition to peers of the blood royal, spiritual and lay lords of (a) members elected thereto directly and indirectly in the (b) hereditary peers elected by the order and (c) members

large There was a feeling that it would be unwise to do any half hearted reforming of the hereditary House especially when such action involved an increase of its powers At any rate the five resolutions were pigeonholed when the Lloyd George coalition ministry went out of office in 1922

There the matter has rested during the intervening years From time to time discussions of the matter have taken place in the House of Commons but nothing tangible has come of them These discussions indicated a good deal of feeling that the House of Lords ought to be reorganized but they also disclosed a wide divergence of opinion as to what form the reorganization should take At least a dozen plans for reforming the House of Lords have been brought forward from various quarters and discussed but all of them seem to be open to serious practical objections

SUBSTITUTION  
OF THE  
GOVERNMENT  
FOR REFORM

So the organization of the House remains unchanged It has found salvation in the fact that none of the proposed substitutes seems to promise improvement It is probably true as John Bright once said that a hereditary House of Peers cannot endure forever in a free country yet it will doubtless continue to endure until something to take its place is devised and agreed upon Englishmen as a rule prefer to bear the ills they know than to fly to others they know not of It is not practicable to have an upper House constituted like the Senate

THE FUTURE  
OF THE  
HOUSE

constituted by the crown the numbers are to be determined by statute That with the exception of peers of the blood royal and the law lords every other member of the constituted and reduced House of Lords shall hold his seat for a term of years to be fixed by statute but shall be eligible for reelection

3 That the reconstituted House of Lords shall consist proportionately of 350 members

4 That whilst the House of Lords shall not make any money bill the same as at present the bill is to move in the House of Commons and shall be passed by the House of Commons and shall be referred to a select committee of the House of Commons which shall be final That the select committee shall be composed of the members of the House of Commons and shall be composed of seven members of the House of Commons and the Speaker of the House of Commons shall be ex officio chairman of the committee

5 That the provisions of the Parliament Act, 1911 by which bills can be passed in the House of Commons without the assent of the House of Lords during the course of a session shall apply to any bill which is introduced in the House of Commons as set out in these resolutions or which in any way increases the powers of the House of Lords as laid down in the Parliament Act and modified by these resolutions

of the United States because Great Britain is not a federal state. The method used in constituting the French Senate would be practicable in Great Britain but that body is not regarded by Englishmen as a model worth copying.

Most people agree that an upper chamber in any well organized government should serve as a check on the lower chamber that it should provide a safeguard against hasty and ill considered legislation. For that reason the members of the two chambers ought not to be chosen from the same districts in exactly the same way. On the other hand they ought not to be selected in such widely different ways that the two chambers will reflect irreconcilable points of view and get themselves into continual deadlocks. How to organize the two chambers on a different basis yet on a basis not too different—that is a problem which Great Britain has not yet been able to solve.

But why not abolish the upper House altogether and get along with a single chamber? The members of the Bryce Conference were unanimous in their belief that such action would be unwise. They agreed that there are at least four distinct and essential functions that cannot be well performed save by a second chamber. These four functions are as follows:

THE BASIS OF  
A FEDERAL  
SYSTEM

WHY NOT A  
SINGLE  
CHAMBER?

1 The examination and revision of bills brought from the House of Commons a function which has become more needed since on many occasions during the last thirty years the House of Commons has been obliged to act under special rules limiting debate.

2 The initiation of bills dealing with subjects of a practically non-controversial character which may have an easier passage through the House of Commons if they have been fully discussed and put into a well considered shape before being submitted to it.

3 The interposition of so much delay (and no more) in the passing of a bill into law as may be needed to enable the opinion of the nation to be adequately expressed upon it. This would be especially needed as regards bills which affect the fundamentals of the constitution or introduce new principles of legislation or which raise issues whereon the opinion of the country may appear to be almost equally divided.

4 Full and free discussion of large and important questions, such as those of foreign policy at moments when the House of Commons may happen to be so much occupied that it cannot find sufficient time for them. Such discussions may often be all the more useful if conducted in an assembly whose debates and discussions do not involve the fate of executive government.

Englishmen are in the habit of saying that the House of Lords represents *nobody* while the House of Commons represents *everybody*. But if the House of Lords were reformed and given a representative character the situation would be different. Then it would represent *somebody*. Like the American Senate it would attempt to take a coordinate share in legislation. The House of Commons would no longer have supremacy; it would merely be part of a system of checks and balances. Naturally the Commons does not want a reform of that sort. It does not desire to build up a competitor of its own kind. I don't want to say a word against brains, says one of the characters in Gilbert and Sullivan's *Iolanthe*, but with a House of Lords composed exclusively of people of intellect, what's to become of the House of Commons? That indeed is what the commoners want to know.

NOBODY AND  
EVERYBODY

So the strength of the House of Lords, paradoxical as it may sound, arises from its weakness. By becoming weaker it has grown strong. At best it can now delay legislation; it can no longer thwart the will of the popular House. With its fangs drawn it is no longer a menace to democracy; hence the need for reform has lost much of its urgency.

A STRENGTH  
THAT ARISES  
ON WEAK-  
NESS

It is an anomaly, of course, that so small a body as the British peerage should bulk so large in the affairs of a great nation, but no American need cross the Atlantic to find anomalies in an upper chamber. That one duke should have the equivalent of a thousand votes cast by plain citizens is an absurdity to be sure, but it is just as grotesque that Nevada, with a population of eighty thousand, should have the same representation in the Senate of the United States as New York, with ten million. Americans will explain, of course, that this is because it is so stipulated in the Constitution of the United States; to which Englishmen will reply that the hereditary structure of the House of Lords has been embedded in the Constitution of Great Britain for ten times as long.

#### THE VALUE OF THE UPPER CHAMBER

The essential functions which a second chamber ought to perform have been stated in the preceding pages. To what extent does the House of Lords perform them satisfactorily? On the whole it appears to be doing its job fairly well. It examines and revises non-financial measures. It insists, when the occasion arises, that ample time be given for a full public discussion of such bills before they be

come part of the law of the land. It compels sober second thought and give opportunity for passions to subside. It says, now and then to the House of Commons. The opinion of the country seems to be about equally divided on this matter. Suppose you hold up the bill until the people have a chance to discuss it further. It is rarely alleged in England, as it is so often in the United States, that measures are railroaded through. On the other hand the House of Lords has not shown itself disposed during recent years to go beyond its province and obstruct the passage of measures which the country is clearly in a mood to accept. It has accepted the diminution of its powers with as good grace as one might expect peers of the realm to show. Its members no longer feel irritated because great questions of public policy are virtually being settled by the House of Commons alone. To quote once more those comic opera interpreters of the British constitution Gilbert and Sullivan

The noble statesmen do not itch  
To interfere in matters which  
They can not understand

The procedure followed by the House of Lords in considering the various measures which come before it is different from that of the Commons. In the Lords there are no standing committees for public bills. All bills after two formal readings are debated in Committee of the Whole House before being read a third time. Debates in the House of Lords when they take place cannot be shut off by using the closure. If amendments are adopted in the upper House the measure goes back to the Commons for concurrence. Then the Commons either agrees to the amendments or insists on its own way or some compromise is reached by an informal conference. Failing this the bill is deemed to have been rejected and the Commons must then decide whether the measure is of sufficient importance to warrant its repassage in accordance with the procedure laid down by the Parliament Act.

There is a common impression that the House of Lords being composed for the most part of men who have inherited their titles is inferior to the House of Commons in the quality of its membership. Taking the entire personnel of the two chambers and striking an average this impression may be correct but if one were to select let us say the five

GENERAL  
UTILITY OF  
THE HOUSE OF  
LORDS

THE COURSE  
OF ALL IN  
THE LORDS

THE HIGH  
PERSON OF  
THE HOUSE

ablest members of the Lords and set them alongside an equal number of the best drawn from the Commons the Lords would not suffer by the comparison. The upper House contains in its ranks some of the foremost statesmen jurists theologians scholars financiers and industrial magnates of the kingdom. Many of its members have been trained by long years of service in the diplomatic corps in India or in the colonies. These are the men who do the business of the House. Of course there are peers plenty of them who possess neither ability interest nor experience in public affairs but most of these spend their hours elsewhere. They rarely darken the doors at Westminster or if they do they are wholly inactive in the proceedings. The peers who regularly warm the red benches and speak the mind of the upper House are men who have graduated from the Commons or who have administered imperial dominions who have sat in cabinets or presided in high courts or gained their peerages by some other form of conspicuous service.

Is there an upper house in any other country that has included among its members during the past forty years a more striking or more diversified array than is represented by Salisbury Lansdowne Grey Balfour Asquith Birkenhead Reading Tennyson Kelvin Bryce Playfair Lushington Cromer Milner Curzon Haldane Kitchener Haig Rothschild Beaverbrook Northcliffe and Cassfield? Some of these it is true never took much part in the debates for they were not politicians in any sense of the term. But the mere presence of these names on the roll of the House would at least seem to indicate that the chamber which some Englishmen (and most Americans) would believe to be ripe for reform possesses its fair quota of brains and eminence. It is not without reason that the House of Lords has sometimes been called the Westminster Abbey of living celebrities.

So while the House of Lords is unrepresentative in the usual sense of the term it is not altogether unrepresentative of the best in British national life—in industry finance agriculture commerce law religion and scholarship. There are plenty of low voltage peers it is true but most of them stay away from parliament. And there are also some men of the same quality in the Senate of the United States—but they do not stay uncounted when the roll is called.

**HISTORY** The most convenient source of information concerning the early development of the upper chamber of Great Britain are Luke O Pike *Constitutional History of the House of Lords* (London 1894) the same author's *Political History of the House of Lords* (London 1901) A. S. Turberville, *The House of Lords in the Reign of William III* (Oxford 1927) and the same author's *House of Lords in the Eighteenth Century* (Oxford 1927) A. F. Pollard, *The Evolution of Parliament* (new edition London, 1926) is strong on the earlier period May and Holland *Constitutional History of England* (new edition, 3 vols London 1912) contains much that is interesting on the later period.

**DESCRIPTIVE** An excellent survey is included in F. A. Ogg *English Government and Politics* (2nd edition New York, 1936) pp 317-362 General descriptions of the House of Lords its composition and powers may also be found in W. R. Anson *Law and Custom of the Constitution* (5th edition, Oxford 1922) Vol I chap v J. A. R. Marriott, *Mechanism of the Modern State* (2 vols Oxford 1927) Vol I chap xv and A. L. Lovell *The Government of England* (2 vols New York, 1908) Vol I chap xvi.

**THE INTER HOUSE CONTROVERSY** The clashes between Lords and Commons during the past hundred years are described in G. Lowes Dickinson, *Development of Parliament during the Nineteenth Century* (London 1895) also in J. H. Morgan *The House of Lords and the Constitution* (London 1910) Ramsay Muir *Peers and Bureaucrats* (London, 1910) Emily Allyn *Lords versus Commons A Century of Conflict and Compromise 1830-1930* (New York 1931) and H. Jones *Liberalism and the House of Lords* (London 1912) A volume by Adrian Wartner on *The Lords Their History and Powers with Special Reference to Money Bills* (London 1910) is useful on the particular phase of the subject with which it deals.

**PRIVILEGES IMMUNITIES AND PRESENT MEMBERSHIP** On matters relating to the legal status of the peerage the standard work is F. B. Palmer *Peers and Law in England* (London 1907) Mention should also be made of Sir Thomas Erskine May, *Parliamentary Practice* (13th edition London 1924) A. P. Burke's *Complete and Heraldic History of the Peerage and Baronetage* commonly cited as Burke's Peerage gives detailed information concerning all holders of titles.

**THE VALUE OF AN UPPER CHAMBER** Discussions concerning the purpose and value of an upper House may be found in Sir J. A. R. Marriott *Second Chambers* (new edition Oxford 1927) H. B. Lees-Smith *Second Chambers in Theory and Practice* (London 1923) G. B. Roberts *The Functions of an English Second Chamber* (London 1926) H. J. Laski *The Problem of a Second Chamber* (Fabian Tract No 213 London 1925) W. R. Stimpert *Le problème de la seconde chambre et le démocratisme moderne* (Bordeaux, 1922) Ramsay Muir *How Britain is Governed* (3rd edition London 1933) chap vi and H. W. Temperley *Senators and Upper Chambers* (London 1910) The chapter on this subject in J. S. Mills *Representative Government* is still worth reading although it was written many years ago.



**PROPOSALS OF REFORM** The various proposals to reform the House of Lords are dealt with in W S McKechnie *The Reform of the House of Lords* (Glasgow 1909) W L Wilson *The Case for the House of Lords* (London 1910) C Headlam and A D Cooper *House of Lords or Senate?* (London 1932) Lord Merrivale *The House of Lords Its Record and its Prospects Possible Reforms* (London 1935) A L Rowse *The Question of the House of Lords* (London 1934) and the *Report of the Committee on the Reform of the Second Chamber* (1918) commonly known as the Bryce Report

## CHAPTER IX

### THE HOUSE OF COMMONS THE SUFFRAGE

The individual is foolish and the multitude so the movement is foolish when it acts without liberation but the species is wise —and when time is given to it, always acts right —*Edmund Burke*

A history of voting would be a history of government indeed a history of civilization. But if anybody with an antiquarian turn of mind should desire to study the evolution of the suffrage from primitive times to the present no country would afford him a better field for his purpose than Great Britain. Men have been voting in that kingdom under a variety of conditions and restrictions for about a thousand years. There has been no break in this continuity even during epochs of civil war and revolution. Representative institutions passed out of existence in the great countries of the Continent during the seventeenth and eighteenth centuries but in Britain they hung on although at times by a rather precarious grip. There has never been a single year from the time of Alfred the Great to the present day in which Englishmen did not elect somebody to represent them somewhere—in townshipmote or county court in borough council or House of Commons.

Mention has been made of the fact that knights of the shire chosen by the representatives of the freeholders in the county court were summoned to the Great Council at various times during the thirteenth century and that these county representatives became in time a regular element in parliament. It will also be recalled that the boroughs were summoned to send representatives to parliament and that these borough representatives combined with the knights of the shires to form the House of Commons. The knights were chosen at the meetings of the county court by the common assent of all the freeholders of the county the borough representatives were elected by all the burgesses or freemen of the borough. British parliamentary suffrage began therefore on a basis that was at least democratic

in theory with no precise distinction between the qualifications for voting in counties and boroughs. This was not the result of a revolution in 1215 or at any other date. The Great Charter may have been revolutionary in some of its provisions but it extended the suffrage to nobody who did not have it before. The right of the freeman to have a voice in the election of his local rulers far antedated the victory of the barons over John Lackland. It was in theory at least the earliest basis of English local government.<sup>1</sup>

But the suffrage did not forever remain democratic even in theory. In the reign of Henry VI (1429) provision was made that none should vote in the counties except those who held free hold land with a rental value of at least forty shillings per year. This was a sweeping disfranchisement inasmuch as many freehold estates perhaps the majority of them had a rental value of less than forty shillings. The forty shilling freeholder however determined the election of members of the House of Commons in the counties of England from that date to the passage of the Great Reform Act in 1832.

Meanwhile the suffrage in the towns was also narrowed although not as a result of any special enactment. The theory that every freeman had a right to vote remained in existence but the definition of a freeman became steadily less comprehensive. In some towns the list of freemen was confined to those who held land under certain forms of tenure or who paid certain forms of local taxation. In others it was whittled down to guild members or members of certain industrial organizations. In some boroughs indeed men could only acquire the freedom of the town by being born the son of a freeman or by marrying a freeman's daughter or by paying a fee into the town treasury. In every set of towns were the requirements exactly alike each developed its own rules precedents and practice. But in general during the interval between the fifteenth and the nineteenth centuries the borough suffrage everywhere grew more restricted this development being assisted by the king who desired to control the House of Commons and found that towns with few voters could be more easily controlled than those which had a large number.

Now it may seem at first glance surprising that the masses of the

<sup>1</sup> For full text of English medieval legislation see M. H. K. The Parliamentary Representation of the English Boroughs during the Middle Ages (New York 1932).

people both in country and town should have permitted the franchise to be so easily taken away from them. But this is only because in modern times the people have come to look upon the suffrage as something worth fighting for. Nobody looked upon it in that light five hundred years ago. No salaries were then paid to members of parliament from the national treasury: each county or town had to defray the cost of its own representation. Often the election went to anyone who could be induced to pay his own expenses. Sometimes there was great difficulty in getting anybody to do this. Hence towns occasionally sent petitions to the king asking that they be relieved of the burden of sending representative to parliament. Much oratory has been spilled in declamations about the way our Anglo-Saxon forefathers fought for the right to vote: but the sober prose of it is that nobody thought the right to vote worth fighting for until about a couple of hundred years ago.

It was only when the House of Commons began to get the upper hand in government that representation in it came to be looked upon as a privilege.<sup>1</sup> Meanwhile the suffrage requirements had become chaotic. In the counties every forty shilling freeholder was entitled to vote: but there were many different forms of freehold tenure. In some towns the right to vote had been granted to nearly all the adult male inhabitants: in others not one per cent of the population were freemen of the town. In some boroughs the suffrage included all pot & allopers: that is all adult males who had possession of any premises in which food could be cooked. So it often happened that when a man's house burned down he left the chimney standing and on the eve of an election might be seen kindling a fire in it as evidence of his political qualification. In others none but members of the municipal corporation could vote. Membership in this corporation might be obtained by birth, by marriage, by purchase, by grant—in a dozen different ways. Every town was a law unto itself. Whether a man could vote depended on where he lived.

Representation in the House of Commons moreover was not distributed according to population: every county and every borough whatever its size had twelve members. Under these conditions it is a travesty on the facts to say that the House of Commons prior

<sup>1</sup>For full count see P. A. Gibbons *History of Political Representation in Parliament 1651-1832* (Oxford 1914).

to the great reform of 1832 represented the people of Great Britain. The total population of Great Britain and Ireland in 1831 was about twenty four millions of whom nearly ten millions would have been entitled to vote under a system of universal suffrage. As a matter of fact the number of those who actually possessed the right to vote was less than a million and probably a good deal less. England during the first quarter of the nineteenth century was not a democracy in fact. Nor was the United States for that matter. Both countries were governed by the upper classes of society. As Blackstone put it England was ruled by the gentlemen of the kingdom.<sup>1</sup>

The worst feature of English government at this time was not the narrowness or diversity of the suffrage but the gross inequality of the counties and towns which elected members each to parliament. No general redistribution of seats had been made for a long time. Meanwhile some boroughs and counties had stood still or diminished in population while others had greatly increased. The Industrial Revolution with its introduction of steam power and smoke belching factories had changed the face of the country. It drew off population from some rural districts until they had almost no inhabitants at all. On the other hand it crowded tens of thousands into the new factory towns such as Manchester, Birmingham, Leeds and Sheffield. Yet the depopulated boroughs kept sending members to parliament while the new centers of population got no increased representation and in some instances had no representatives at all. This was not the result of a sinister design on anybody's part. It was merely the product of the great economic change. Population had shifted, the distribution of seats in parliament had not. It was the old story of laws and political institutions failing to realize that a new era had come.

The result was a horde of rotten boroughs all over the country. Most of these were old towns from which the inhabitants had departed, leaving only the ruins of their homes and a well filled graveyard behind them. What had been thriving towns at the beginning of the eighteenth century were being turned into sheep farms at the beginning of the nineteenth—raising wool for the new steam factories. The

<sup>1</sup> See the passage on the government of England which concludes Book v of *Plato's* *Commonwealth*.

shape have become such greates devowerers and so wilde lamented one writer of the time that they pluck up and swallow down the very men themselves Old Sarum was the classic example of these blighted constituencies a flourishing place in older days which began to slip during the eighteenth century and drifted into the nineteenth without a single house inhabited It had seven freemen however—all of them non residents and these seven retained the right to elect two members of parliament They did it, of course from among themselves The borough of Corfe Castle was another ghost town on the eve of the great reform it consisted of a ruined manor house and a few dilapidated outbuildings The owners of this ramshackle property likewise elected a brace of members to the House of Commons

The borough of Downton lived up to its name for it was down under water the sea having swept over it and made it an uninhabitable salt marsh but this catastrophe did not mean that Downton stopped sending members to parliament A few non resident freemen attended to that Malmesbury had thirteen voters no one of whom could read or write They voted by a show of hands The Scottish constituency of Bute however was the prize pocket borough of them all *its list* of freemen contained one name On election day this lone voter regularly appeared at the polling place called the roll answered to his own name moved and seconded his own nomination put the question to a vote and was unanimously elected a member of parliament

These decayed boroughs naturally fell a prey to speculators who bought them for the sole purpose of controlling the representation. In this way a parliamentary bootlegger sometimes managed to get a half dozen or more seats into his possession *The cat then became his patronage* to sell or give away as he saw fit Hence the origin of a term which has passed into the political vernacular of all English speaking peoples There is not much difference in fact between the English patron of a century ago and the American political boss of today Often the patron had an eye to profit and put up the seats for sale to the highest bidder This was not done *sub rosa* but by open advertisement in the newspapers There was a great demand for these seats especially among the nabobs as they were called men who

had returned from India after making their fortunes.<sup>1</sup> By spirited bidding they ran the prices up to a high figure and sometimes as much as three thousand pounds had to be paid for the privilege of writing M.P. after a bourgeois name. The House of Commons, as the best club in London, afforded an opportunity for social advancement. Lord Chesterfield in his famous letters to his son (1767) expressed disgust that even noble lords were profiteering in the sale of their pocket boroughs. Still some very able men got their start in politics by the favor of patrons—as they have done in America through the favor of bosses. William Pitt entered the House of Commons as member for a pocket borough, so did Charles James Fox.

It should not be imagined of course that the majority of the members in the House of Commons prior to 1832 were chosen in this way. But the proportion was sufficiently large to give these patrons the balance of power. It enabled <sup>ELLECTORAL CORRUPTION</sup> them to block every project for widening the suffrage or redistributing the seats. Moreover in counties and boroughs where the electorate was too large to be controlled by a patron there was a great deal of open bribery. Some wealthy outsider seeking to capture the seat could come in with his gold. The voters would hold off until they got their price. The polling extended over a week and in a close election the price went a little higher each day. In the last hours of the polling it sometimes rose to twenty or thirty pounds per vote. A freeman of the town who sold his vote at the top of the market had no need to work for a living during the rest of the year. The House of Commons said Pitt is not representative of the people of Great Britain; it is representative of nominal boroughs of ruined and exterminated towns of noble families of wealthy individuals and of foreign potentates. This by the way, as the House of Commons which passed the Stamp Act placed the taxes on tea, attempted to coerce the colonies and provoked the American Revolution.

#### THE GREAT REFORM

The movement for a reform of the suffrage and for a redistribution of seats began as early as 1780 but for various reasons it made slow progress. The excesses of the French Revolution gave it a setback. Then for a dozen years Europe was convulsed by the great con-

<sup>1</sup> See also p. 104 Chapter XX.

THE MOVE  
MENT FOR RE  
FORMING THE  
SUFFRAGE

fact with Napoleon and it was not until after the Corsican had been safely caged at St Helena that the people of Great Britain could give due thought to their own domestic problems. The close of the Napoleonic War was immediately followed moreover by a wave of conservatism, a resurgence of autoeracy such as invariably follows a great war. The ten years following 1815 were not favorable for the launching of political reforms. England was tired of Continental turmoils anxious to live in tranquillity within her own sea girt bounds eager to build up her own industry and disinclined to do anything rash. Reform had to await a change in the national temper.

ITS CONNEC  
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THE NEED FOR  
SOCIAL AND  
ECONOMIC  
REFORM

Great wars are followed by conservative reactions but they also create problems of economic and social reconstruction which cannot be solved by reactionaries. England after 1815 had become an industrialized country with millions of people huddled together in mushroom factory towns. Yet the authorities did not sense the fact that this redistribution of the people meant new needs new problems, new laws new politics. Hence there was no town planning no provision for water supply or sanitation no serious attempt to prevent overcrowding in the houses occupied by the workers. The hours of labor were long and the pay was low. Women and children in large numbers were required to work under conditions which menaced the future of the race. A few social and economic reformers cried out in protest against the existing conditions but they were looked upon as wild asses of the desert. (Pioneers of great reforms usually are.) Nevertheless they kept on and soon aroused a far reaching popular demand for laws in the interest of the factory worker for a readjustment of the tax burdens which the war had imposed and for an improvement in the conditions of urban life. To this clamor the unreformed House of Commons made no response hence it gradually dawned upon the people that no program of social or economic betterment could be put into effect until parliament had itself been reconstructed. Political reform in other words must come first.

THE FINAL  
VICTORY

Political reconstruction however was not an easy thing to achieve for the obstacles were great. Peers and patrons were in the way. The inherent conservatism of the middle-class Englishman his fondness for old traditions his aversion to drastic changes—these were hard to overcome. The movement for political reform did not show much progress.



until 1832 when by a fortunate combination of circumstances a Whig ministry came into power. The next year it ventured to bring in a reform bill. The House of Commons passed it the Lords threw it out the Commons passed it again. A bitter conflict then ensued between the two chambers and the issue was for a time in doubt. In some countries such an impasse would have led to civil war. But ultimately the Lord gave way and the Great Reform Act of 1832 went on the statute book. A revolution in the spirit of English government was accomplished without firing a shot.

The Act of 1832 is perhaps the most important statute ever passed by the British parliament. First of all it dealt with the redistribution of seats. The act did not provide for a general redistribution nor did it adjust representation to the number of voters in each district but it cleared away the most glaring inequalities. The rotten boroughs and pocket boroughs were for the most part obliterated from the list of constituencies. Some of the smaller boroughs were consolidated while others had their representation reduced from two members to one. In this way nearly one hundred and fifty seats were gained for distribution among the more populous new towns and counties. The act gave at least one representative to every populous community.

In the second place the Great Reform Act overhauled the suffrage requirements. Parliament might have taken this opportunity to make the suffrage uniform in both counties and boroughs but did not do so. The old distinction between county and borough suffrage was retained. In the counties the franchise was extended to include not only the forty shilling freeholders but tenants of lands having certain higher rental values. In the towns a uniform suffrage was substituted for the old diversity of requirements by enfranchising all rate paying occupants who were assessed on a rental value of ten pounds or more per annum. In other words any occupant of premises having an assessed rental value of a dollar a week or the equivalent. But it did not extend the suffrage to lodgers or those who merely rented furnished rooms hence it left considerable short of full manhood suffrage. Still it is estimated that the Act of 1832 added more than half a million voters to the list thus nearly doubled the total number.

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OF THE GREAT  
REFORM ACT

1. REDIS-  
TRIBUTION OF  
SEATS

2. TOWNS  
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SUFFRAGE

## LATER SUFFRAGE EXTENSIONS

While this measure quieted public clamor for the moment it did not bring the reform movement to an end. The constituencies were still uneven the secret ballot had not yet come into use elections continued to extend over several days and electoral corruption was still prevalent. Groups of militant reformers known as Chartists kept up a spectacular campaign for a new Magna Carta a new charter of liberties which would guarantee manhood suffrage equal constituencies the secret ballot annual elections and other democratic reforms. Chartism did not succeed in its program but the drift of public opinion eventually became strong enough to compel a further widening of the suffrage. Strange to say the Conservatives were the ones who fathered the Second Reform Act of 1867 a measure introduced by the Disraeli cabinet. This adroit Jewish premier stole from the Liberals their best political ammunition.

The Act of 1867 provided for a further redistribution of seats by taking members from the smaller constituencies and giving them to the larger ones. It also extended the suffrage in both counties and boroughs more particularly by including all ten pound lodgers in the borough lists.<sup>1</sup> Although this extension stopped short of manhood suffrage it added almost a million voters to the electoral lists or about twice as many as had been admitted by the Great Reform Act of thirty five years before.

Much tinkering with the electoral laws took place during the next two decades mostly in attempts to remedy specific defects in the electoral system. The secret ballot was brought into use (1872) the practice of keeping the polls open for a whole week was abolished and elections were confined in each constituency to a single day. Finally a drastic law for the suppression of corrupt practices was enacted (1883). A further extension of the suffrage was granted in 1884 and a considerable redistribution of seats took place in 1885.

From this latter date to the close of the World War there were no considerable changes in the system of electing members to parliament. Voting continued to be related in some way or other to the ownership or occupancy of property. But this was not so undemocratic an arrangement as

<sup>1</sup> That is lodgers paying at least ten pounds a year as rental for their lodgings.

it sounds because owners occupants and lodgers constitute the great majority of the adult male population in any country. On the other hand the requirement that every voter should be an owner a tenant, or a lodger did disfranchise a good many farm laborers domestic servants (coachmen, butlers etc.) as well as sailors and other persons whose occupations required them to move about frequently from place to place. It is estimated that about 10 million names were kept off the lists in this way. Moreover none of these electoral reform acts gave the suffrage to women.

There was a movement for woman suffrage in Great Britain before the outbreak of the World War but it had made little headway. During the war however it gained strength by reason of the willingness with which thousands of British women went to work in munition factories.

THE DEMAND  
FOR WOMAN  
SUFFRAGE.

thus releasing large numbers of men for active military service. Public opinion swung over to the view that the women whose sacrifices helped to save England ought to be given a share in government in England. Yet it did not seem wise to precipitate a controversy over this issue while the war was raging. So the problem of settling the basis of a new electoral law which would grant equal suffrage and make various other changes without starting a controversy in parliament was referred to a large conference representing all the political parties and presided over by the speaker of the House of Commons. This conference agreed on a report some provisions of which were in the way of compromises to secure unanimity. On the basis of this report a new electoral law was drafted.

This statute which passed parliament without difficulty is known as the Representation of the People Act (1918). The old distinction between county and borough constituencies was retained in this statute but the suffrage qualifications were now (for the first time) made uniform in both. Hence the distinction between

THE ACT OF  
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QUESTIONS

8 George V 64-65. A supplementary law known as the Representation of the People Act (10 & 11 George V c. 3) was passed in 1920. It will be noted that the English practice is to designate acts of parliament by titles which give a little of their contents. Thus the Housing of the Workers Act, the Defence of the Realm Act, the Government of Ireland Act, the Government of India Act, and so on. The student of political history has thus an obvious advantage over the American plan of naming measures with the names of congressmen. Such designations like Sherman Act, the Volstead Act, the Harrison Act, the Mann Act, the Wagner Act, etc., convey no information as to what the law deals with.

county constituencies and borough constituencies is no longer of any practical importance. A borough member is one who represents a large town or city; a county member is one who represents a group of smaller towns, villages and rural districts. But both are chosen at the same time in the same way and by the same suffrage. Each county and borough member represents approximately the same number of people. The present quota is about 75,000. In the United States the quota for each congressional district is about 275,000. Hence a congressman represents on the average nearly four times as many people as a member of parliament.

The main provisions of the Act of 1918, however, related to the enlargement of the voters' lists. The franchise was widened so that it now includes every male British subject twenty-one years of age and over who has lived in any constituency or in an adjoining constituency for at least three months prior to the annual compilation of the voters' register. Or if he occupies an office or any other business premises in the constituency, he may be enrolled as a voter though he is not an actual resident.<sup>1</sup> But they put a limit on plural voting. Prior to 1918 a man who occupied property in several constituencies could vote in each of them, and as the elections were not held in all the constituencies on a single day he could travel around from one place to another in time to cast his ballot in each. Thus it sometimes happened that a man who had an office in London, a summer cottage in Brighton, a shooting lodge in Scotland, and a country house in Surrey could qualify as a voter on each of these premises and cast several ballots at a general election. This is no longer possible. No one under any circumstances may now vote in more than two constituencies. If he be an *occupier* in one constituency and a *resident* in another he may vote in both.

In addition, all British subjects who hold degrees (except honorary degrees) from certain universities are entitled to cast their ballots for the election of those members of parliament who represent the

<sup>1</sup> The premises must have a rental value of at least ten pounds per annum—that is, a little more than four dollars per month.

A person who actually lives in a place, an *occupier* does not live on the premises—as in the case of an office or factory.

universities (see pp 172-173) and may also vote in the constituencies where they reside but in that case they may not also claim qualification as occupants of business premises. Thus the principle of one man one vote is not yet established in Great Britain although as a matter of fact the great majority of the electors have one vote only. The number of those who are entitled to a second vote under the existing laws is considerable but it forms a very small fraction of the total electorate and many of those who possess the right do not exercise it.

The question of woman suffrage gave the parliamentary leaders a great deal of difficulty in 1918. Logic seemed to dictate that if women were admitted to the suffrage they should be admitted on equal terms with men. But even logic has to reckon with the realities and everyone knew that Great Britain had suffered a serious reduction in man power by reason of the war. If the two sexes were placed on an equality therefore the women would considerably outnumber the men on the voting lists. Even those who favored woman suffrage were not sure that the creation of a preponderantly feminine electorate would be a wise action to take at a time when the nation was still in the throes of a struggle for existence (February 1918) with the outcome of the war still in doubt.

After much deliberation therefore a compromise between logic and the interests of British man power was reached by the establishment of a twofold restriction on woman suffrage. First it was provided that women should not be eligible to vote until the age of thirty and second that they must either be occupants of property or be the wives of occupants. The Act of 1918 further arranged that a woman over thirty years of age if a business occupant in one constituency and residing in another might vote in both as in the case of male voters.

The action of parliament in providing an age differential for the safeguarding of political masculinity was of course not altogether satisfactory to the woman suffrage organizations of Great Britain. Hardly was the ink on the statute dry when they began their agitation for an amendment to this compromise provision. The old guard of anti-suffragists put up a hard fight against votes for women as they called it but unavailingly for in 1928 an equal franchise bill was brought in by a Conservative ministry and passed both Houses. The voting

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age for women was reduced to twenty one and all other legal differentiation between male and female suffrage was swept away. Five million more names were thus put on the parliamentary voters lists bringing the total electorate up to about twenty seven millions or more than half the entire population.

In the United States the same suffrage requirements are established for national state and municipal elections but in Great Britain

BRITISH AND  
AMERICAN  
SUFFRAGE  
RULES COM-  
PARED

this is not yet the case. The voters lists used in parliamentary elections vary somewhat from those used in municipal elections. In national elections there is virtually universal suffrage with the customary qualification of citizenship and residence but

in municipal elections the suffrage is still hatched up with ownership or occupancy. No one is eligible to vote at these elections unless he (or she) is an owner or occupant of some premises or the husband or wife of an owner or occupant. Hence it is that a man (or woman) may be a parliamentary voter but not a municipal voter for the local suffrage is more restricted than the national.

There are certain disqualifications which render both men and women ineligible to be enrolled as voters at parliamentary elections.

DISQUALIFI-  
CATIONS

The list of disqualifications is sometimes facetiously stated to include criminals idiots aliens paupers and peers. Criminals and idiots while confined in

public institutions are not permitted to vote. Nor may anyone be enrolled unless he is a British subject by birth or naturalization. The term British subject however includes everyone who owes allegiance to the king and is not restricted to the inhabitants of the British Islands. It includes Canadians Australians South Africans East Indians, as well as Englishmen Irishmen Scotsmen and Welshmen. Members of the peerage are excluded from voting at parliamentary elections because they are adequately represented in the House of Lords but in municipal elections this exclusion does not apply. The right to vote at all elections both parliamentary and municipal, was formerly withheld from paupers that is from those who are supported by the public poor relief funds this disqualification was abolished by the Act of 1918 but paupers who are maintained in public institutions do not get their names on the voters list because they are not deemed to have satisfied the residence requirement. Voters may also be disfranchised by the courts on conviction for certain corrupt practices at elections.

Thus by successive steps the British suffrage has been widened and made democratic over a period of one hundred years. In 1831 the parliamentary voters of Great Britain numbered less than one twenty fourth of the population from 1832 to 1867 the proportion was about one sixteenth. From 1867 to 1885 it stood at one twelfth but from the latter year to 1918 it went up to one seventh. The Act of 1918 by admitting a large number of women voters raised the proportion to one third and the Equal Franchise Act of 1928 hoisted it to more than one half. Thus the British electorate has moved from four per cent to fifty five per cent of the population in the course of a hundred years. This of itself will give one some idea of what has been termed the irresistible march of democracy.

THE MARCH  
OF DEMOC-  
RACY

**THE PRE REFORM SUFFRAGE** The best history of the English parliamentary suffrage prior to 1832 is that given in the two volumes on *The Unreformed House of Commons Parliamentary Representation to 1832* by Edward and Annie G. Porritt (2nd edition 2 vols Cambridge 1909). A later work in the same field is L. B. Namier *The Structure of Politics in the Eighteenth Century* (2 vols London 1929). J. Holland Ross *The Rise and Growth of Democracy in Great Britain* (London 1897) gives a comprehensive account in briefer form. The story of the eighteenth century may be found in Charles Seymour and Donald P. Farr *How the World Was Won* (2 vols Springfield Mass. 1918). Vol. I chap. 1. Mention should also be made of G. S. Venetia *The Growth of Parliamentary Reform* (London 1913), G. M. Trevelyan *Earl Grey and the Reform Bill* (London 1920), P. A. Gibbons *History of Parliamentary Reform 1688-1832* (Oxford 1914) and J. R. M. Butler *The Passing of the Great Reform Bill* (New York, 1914).

SINCE THE ACT OF 1832 The later extensions of the suffrage are discussed by O. F. Christie *The Transition from Aristocracy 1832-1870* (London 1927), Homersham Cox *Reform Bills 1866 and 1867* (London 1868), J. H. Park *The English Reform Bill of 1867* (New York 1920), Charles Seymour *Electoral Reform in England 1832-1867* (New York 1915) and Sir Hugh Fraser *Representation of the People Act 1918-1928* (London 1927). The pre-war period is covered in H. L. Morris *Parliamentary Franchise Reform in England from 1832 to 1918* (New York 1918).

A full discussion of the Act of 1918 may be found in G. P. W. Terry *The Representation of the People Act 1918* (London 1919), W. H. Dickinson *The Reform Act of 1918* (London 1918), A. O. H. B. and F. J. Ogden *The Representation of the People Act 1918* (London 1918) and J. L. Seager *Parliamentary Election for the Reform Act of 1918* (London 1918).

WOMAN SUFFRAGE IN GREAT BRITAIN The winning of woman suffrage in England is discussed in W. L. Bleasde *The Emancipation of English Women* (London 1913) Emmeline Pankhurst *My Own Story* (New York 1914) M. G. Fawcett *The Women's Story—and After* (London 1920) and R. Strachey *The Cause A Short History of the Women's Movement in Great Britain* (London 1928)



## CHAPTER X

### THE HOUSE OF COMMONS NOMINATIONS AND ELECTIONS

Representations will probably perish by ceasing to be represented.  
 And no democracy does not mean a democracy to parliamentary  
 government even toward greater liberty.—*W. E. H. Lecky*

Members of the House of Commons are the only persons connected with the central government of Great Britain who are chosen by popular vote. All others owe their positions to inheritance or appointment. The country is divided into parliamentary districts or constituencies and for the most part each constituency elects one member. There are however some two member constituencies. The present House of Commons contains 615 members distributed as follows: England 492, Wales 36, Scotland 74, Northern Ireland 13. Each member of the British House of Commons (with the exception of the university members) represents on the average about 75,000 people. According to the Constitution of the United States there must be a redistricting after each decennial census; in Great Britain there is no such requirement either by law or by custom. Parliament rearranges the constituencies at irregular intervals; the last general redistricting was in 1918, while the one before that was in 1885. Thus there has been only one reapportionment in more than fifty years.

It is of interest to note the way in which this redistricting is done. In 1918 the first step was to appoint a Redistribution Commission composed of persons in whose integrity and independence the House of Commons had confidence. This commission was directed to prepare a plan for the redistribution of seats, but the principles which they were to follow were laid down by the House in resolutions which had been agreed upon by all parties. The commission held local inquiries all over the country and thereafter drafted recommendations which were finally embodied in a bill placed before parliament and passed with no substantial changes.

THE ORDINARY  
 CONSTITUTIONAL  
 PRINCIPLE

HOW THE  
 ARE MAPPED  
 OUT

This procedure might seem to give opportunity for gerrymandering but English political traditions are strongly against anything of the kind and there has been virtually none of it. All the constituencies so far as is practicable follow historical boundaries they include a single town or two contiguous boroughs or a part of a large city or what is left of a county after the towns have been taken out. They are never constructed by piecing together parts of different boroughs or different counties. When a county or a borough is parcelled into two or more constituencies these are known by names not by numbers as in the United States. Thus a member of parliament represents the West Derby division of Liverpool or the Darwen division of Lancashire whereas a member of Congress sits for the tenth Massachusetts district or the eighth Illinois congressional district.

Not all the seats in the House of Commons however are allotted to boroughs and counties. The older British universities have for many years been entitled to representation in the House of Commons and fifteen seats were allotted to all the universities by the Act of 1918. This represented a slight increase over their previous quota. By the withdrawal of the Irish Free State the number of university members has been reduced to twelve. Two members are allotted to Oxford and two to Cambridge one to the University of London three to the four Scottish universities (Edinburgh Glasgow Aberdeen and St Andrews) one to the University of Wales two to the English provincial universities (Manchester Birmingham Durham etc) and one to Queen's College Belfast. The voters lists in these university constituencies include all British subjects who hold degrees (other than honorary degrees) or have fulfilled the stated requirements for a degree.

The list of university voters is prepared by the governing body of the university from its lists of graduates leaving out those who are not British subjects. When a university constituency is entitled to several members as in the case of the Scottish universities the election is determined according to the principles of proportional representation thus giving the minority a chance to be represented. It is not necessary that graduates shall come to the university on election day and vote in person. They are allowed to send their ballots by mail to the polling officer.

NO GERRY  
MANDERING

THE UNIVER  
SITY CONSTITU  
ENCIES

HOW UNI  
VERSITY  
MEMBERS ARE  
ELECTED

The practice of according representation to the universities has existed in Great Britain since the reign of James I. Its origin was connected with the king's attempt to control the Commons but the universities soon ceased to elect the royal nominees and sent men of sterling independence to parliament. University representation thus became a fixture. Although it involves a departure from certain fundamental principles in parliamentary representation and offends the dogma of electoral equality there has been no serious popular outcry against it and in 1918 the number of university members was somewhat increased.<sup>1</sup> The fact that it involves a political discrimination in favor of the educated classes does not seem to rankle in the British mind. The universities as a rule choose men of ability and of liberal views. With one or two exceptions they are far from being strongholds of Toryism. Even the Labor party has a large number of university graduates in its ranks and among its leaders.

A COMMENT  
ON THE  
SYSTEM

In Great Britain a general election must nominally be held at least once in every five years but parliament is supreme in its power to prolong its own life when it decides to do so. It did so during the war years 1914-1918 thereby affording a fine illustration of the way in which the British constitution can be adapted to the needs of the hour. The Congress of the United States no matter what the emergency can not prolong its own life for a single day. Whether in war or peace there must be a congressional election every second year. British elections do in fact come oftener than once in five years sometimes two have taken place in one year as in 1910 or three in successive years as in 1922-1924. This is because the prime minister can at any time advise the crown to dissolve parliament and issue writs for a general election. Occasionally his hand may be forced by the opposition in parliament but more often he either lets parliament run its term or with an eye on the drift of public sentiment decides to advise a dissolution and a general election when the chances of victory look promising somewhere near the end of its term.

THE DURATION  
OF A  
PARLIAMENT

Naturally the members of the House do not like the idea of a

A Finance Bill which was brought by the Asquith ministry in 1912, but later withdrawn, called provisionally for university representation. This proposal evoked general opposition even from unexpected quarters.

It should be noted that in the present proposal the university members of the House of Commons are not to be elected by the House of Commons but by the House of Lords.

new election until their full five year term expires for an election campaign means expense to them and the risk of defeat also. But the prime minister is the generalissimo and it is he who decides with the help of his cabinet whether good strategy dictates an appeal to the country. Having made up their minds however the ministers can keep the decision secret until their own campaign plans are in readiness. On a few occasions they have been able to spring an election upon their opponents catching the latter unawares. But the opposition has learned that it pays to be vigilant and nowadays it is seldom caught napping. Still the privilege of choosing the time for an appeal to the country gives the ministerial forces a distinct advantage.

So nobody can predict just when the next British election will come. But whenever a parliament has been in existence for two

FIXING THE  
ELECTION  
DATE

or three years the political pot begins to simmer. A rumor that parliament is going to be dissolved always finds some believers until it is officially denied.

Presently the newspapers begin to announce from an authoritative source or on trustworthy information that a dissolution of parliament is being considered by the ministry. In the end after various false alarms an official announcement settles the matter by giving the exact dates for the nomination and the pollings. The interval between this announcement and the date for the nominations is usually brief sometimes only two or three weeks. That being the case the political parties do not delay the selection of their candidates until the date of the election is known. They have them in readiness long before the announcement comes.

#### NOMINATIONS

The methods by which the parties choose their candidates are not alike in all the constituencies and in any event these methods can be best explained in connection with a survey of

HOW NOMI-  
NATIONS ARE  
MADE

party organization and activities a little later. But the official nomination procedure is very simple. All that a candidate need do in order to get his name on the ballot is to file a nomination paper signed by ten qualified voters of the constituency. This document he hands to the returning officer on the day designated for the making of nominations. The returning officers are named ex officio in a borough the mayor always serves and in a county the sheriff. When a constituency spreads over more

than one borough or county the home secretary designates which mayor or sheriff is to act. In the university constituencies the vice-chancellor or some similar academic official does duty as the returning officer.

On the day set for making nominations the returning officer attends at the town hall or court house or other convenient place and the nomination papers are handed to him by the candidates or their agents. One hour is allowed for this purpose then the nominations are closed.

THE PAPERS  
AND THE  
EPOCH

Although only ten names are required on nomination papers it is customary for the candidates to gather a much larger number sometimes several hundred. This is done by way of advertising the candidate's popularity. With his nomination paper each candidate must also place in the hands of the returning officer a deposit of one hundred and fifty pounds sterling. This requirement of a deposit is intended to discourage frivolous or hopeless candidates. If the candidate receives more than one eighth of the total vote on election day his deposit is returned to him; otherwise it is forfeited and turned into the national treasury. Some deposits are forfeited at every election.

Apart from this requirement the most distinctive feature of the British nomination system is its simplicity. There are no primaries as in the United States. So far as the official requirements are concerned anybody can have his name submitted to the voters if he is willing to risk a few hundred dollars. Getting ten signatures is no trick in a constituency of thirty or forty thousand voters. But the deposit is another matter and serves as a deterrent to those who merely desire to gratify their personal vanity by getting their names on the ballot. No candidate moreover may announce himself as the representative of a political party unless he has been formally accepted or endorsed by the regular party officials. And without a party endorsement his chances of success are small. It is not unusual for more than three candidates to appear in any parliamentary constituency and until the rise of the Labor party there were usually not more than ten. Sometimes only one candidate is nominated and when the time for filing papers has expired he is declared elected unopposed or as the English say by acclamation.

For many centuries no one could be nominated for election to

A similar requirement exists in Japan. See Chapter XLIII.

the House of Commons unless he possessed a property qualification.

QUALIFICA  
TIONS OF  
CANDIDATES.

This requirement is now abolished. Any British subject who is qualified to be a voter may stand for election in any constituency. Women are eligible.

NON RESI  
DENT CANDI  
DATES

It is not necessary either by law or by usage that he be a resident of the constituency which he seeks to represent. Non resident candidacies are common,

although perhaps not so common as they used to be. In Great Britain as in every other country the voter naturally prefers one of his own neighbors to a stranger provided other things are equal or nearly so. But British voters are much more ready than those of other countries to sink this preference if the outsider is a man of distinctly superior qualifications. In every House of Commons there are members sometimes a good many of them who sit for constituencies in which they do not reside and never have resided. Mr Gladstone in his long term of service sat for five constituencies, one after another and did not live in any of them. There is a great advantage in this absence of a residential requirement, for it enlarges the field of selection gives a good man more than a single chance and thus helps to maintain high standards of candidacy.

### ELECTIONS

The polling takes place on the same day throughout Great Britain except in the university constituencies. Nominations are made on

THE POLLING  
DAY

the eighth day after the date of the royal proclamation summoning a new parliament the polling is held on the ninth day after the nomination. Prior

to 1918 the returning officer in each constituency was given a certain amount of leeway in fixing the election date with the result that the polling did not take place everywhere on the same day. Certain counties and boroughs would vote on Monday others on Tuesday some more on Wednesday and so on for a whole week or longer. Clerks and counters moved from one constituency to another being hired by the returning officers. As they were experts the polling machinery ran smoothly and errors in counting the votes were rarely found.

On the other hand this habit of stringing the elections over a week or two had some objectionable features. It prolonged the tension and excitement of a general election. It gave the constituencies which voted last an advantage over those which voted first.

They could see how the election was going and swing to the winning side which not infrequently they did. When half the constituencies had voted the result was usually predictable. This took most of the excitement out of the election long before it was finished. So the Act of 1918 provided for a one day general election as in the United States. In all the constituencies the polling now occupies the hours from eight in the morning till eight at night but the polls may be opened at seven and kept open until nine if the candidates so request and occasionally this is done in thickly populated constituencies. There is no such general uniformity of polling hours in American congressional elections. Each state and sometimes each city fixes its own hours for opening and closing the polls.

The register of voters in each constituency is made up and revised once a year without any reference to whether an election is impending. Thus the list is always in readiness. The function of preparing it belongs to the registration officer in each constituency. He is usually the town clerk of a borough or the clerk of the county council as the case may be. Prior to 1918 when the suffrage was tied up with the ownership or occupancy of property it was the practice to compile the voters list from the assessment rolls. But since the establishment of universal suffrage it has become necessary to secure the names by resort to something like census taking methods. The compilation is not made as in most American states by requiring the voters to come to a certain place and be registered. The British registration officer appoints canvassers who go about from house to house collecting the names of all those who are qualified to vote. These canvassers early in July of each year make their rounds with a copy of the last previous list finding out at each house what changes have taken place during the preceding year. When they present their reports to the registration officer the latter makes up a provisional list which is then posted in various public places—at the town hall the post office sometimes even in the street. It is then an announcement that all claims and objections must be made within a certain interval.

Anyone who finds that his name is not on this provisional register may apply to the registration officer to have it put on and anyone can object to the inclusion of a name already there. The registration officer after hearing such claims and objections makes known his decision in each case but this decision may be appealed to the courts. After an interval

HOW THE LIST  
OF VOTERS IS  
COMPILED

RETURNING  
OFFICER

has been allowed for the making of such appeals the register is closed and thereafter no changes can be made in it until the next revision. Attached to the regular list is a supplementary register of absent voters. This includes the names of persons who by reason of their being in the military or naval service or for some other good reason are likely to be absent from the constituency when an election is held and hence have asked to be put on the special register.

In Great Britain the register of voters when finally closed is deemed to be infallible. Under no circumstances may any vote unless his name is on it. The Act of 1918 is explicit on this point and permits no exceptions. It matters not that a name was left off inadvertently and through no fault of the voter. No officer or court has authority to make changes in the final register. No one may swear in his vote at the polls as is sometimes permitted in the United States. And conversely if the name of any person is erroneously placed on the list he is customarily allowed to vote even though he is obviously ineligible. There is some question nevertheless as to whether the inclusion of a name on the register is absolutely conclusive evidence that the owner of the name has a right to vote. For although the Act of 1918 explicitly provides that anyone whose name is on the register shall be entitled to vote it adds the qualifying proviso that this shall not confer a right to vote on any person who is subject to any legal incapacity to vote. It would seem therefore that a person who is under age for example need not be permitted to vote if his name should happen to get on the list in error.

The ballot used in parliamentary elections is short simple and bears no party designation. It contains merely the name address and vocation of each candidate. The names are set down in alphabetical order and each name is followed by a blank space in which to mark a cross. The ballot is hardly larger than an ordinary envelope. Ballots are arranged in pads like counter checks on a bank counter and attached to each ballot by a perforated line is a numbered stub or counterfoil. The purpose of this counterfoil is to enable the poll clerks to keep track of the ballots. These counterfoils are torn off before the ballots are placed in the box and are kept to check up with the total number of votes cast. The ballots are printed at the public expense under the supervision of the returning officer and are furnished by him to



each polling place. The returning officer also designates the polling places and assigns to each poll a deputy returning officer or presiding officer of the poll together with a poll clerk for every five hundred registered voters. Each candidate is also allowed to have an agent inside the polling room.

The polling places are usually located in public buildings — at the town hall, a school or a courthouse—but it is often necessary to hire space in private buildings as well. Within the polling room are screened compartments in POLLING  
PLACES which the voter marks his ballot. Then he drops the ballot into the box and walks out with a feeling that he has done his duty as a freeborn Briton. The ballot box is merely a covered steel box with a slot in the lid. It is not a complicated contrivance with a handle for inserting the ballots such as is used at American elections. And voting machines built like giant cash registers are not yet used in Great Britain. When the poll is closed the ballot box is sealed and sent to the town hall or other headquarters where the counting is to take place.

The presiding officer of the poll, the poll clerks and the agents of the candidates are all sworn to secrecy. The only function of the agents is to check off the names of those who vote and guard against the impersonation of voters. They CHALLENGING  
VOTERS have a right to challenge any voter on the ground that he is not the person whose name is on the list but not on any other ground. Challenges are decided by the presiding officer of the poll and there is no appeal from his decision. Ordinarily if the voter makes a sworn statement that he is the person whose name appears on the list the presiding officer will accept this statement. Challenges are less numerous than at American elections.

Absent voting has been permitted in parliamentary elections since 1918. Persons who are on the absent voters list or are unavoidably absent from the constituencies in which they are enrolled as voters may appoint proxies to vote for PROXY  
VOTER them. These proxy papers are filed with the returning officer. No person except a near relative or someone who is himself a voter in the constituency may serve as a proxy. Instead of appointing a proxy to vote for him, however, the absent voter may obtain a ballot in advance of the election and send it to the returning officer by mail but this alternative is not open to him unless he mails the ballot from some place within the kingdom. A voter who

is absent at sea or outside Great Britain must use the proxy method in order to have his vote counted <sup>1</sup>

When the poll is closed and the ballot boxes brought to a central place the counting is done by the returning officer and his assistants.

COUNTING  
THE VOTE... The procedure of counting the ballots is quite different from that followed in the United States where

the work is done at each polling booth. In Great Britain the first step is to verify the number of ballots in each box with the total as shown by the poll records. Then all the ballots from the various polling places are mixed together. This is done in order that no one may know how the vote stood at any particular polling place. Only the totals for the whole constituency are announced; hence no candidate can ever tell from the official count whether he ran strong in one section and weak in another.

This will sound strange to the ears of any American politician. Every candidate for Congress insists on knowing the result in each

precinct and those who are defeated sometimes spend a good deal of time in a post mortem analysis of the figures. But at a British election after the

thousands of ballots have been shuffled beyond any such possibility they are divided into bundles according to the candidates for whom they have been marked and the ballots in each bundle are then counted. Spoiled ballots are taken out and put in a special envelope. In spite of this centralized counting a large proportion of the results are announced before midnight on the day of the election. Within a certain space of time any candidate can demand and obtain a recount.

The parliamentary conference which prepared the plan for the Act of 1918 recommended that proportional representation should

be established in all constituencies which elected more than one member. This idea met with great favor in the House of Lords but was rejected by the

Commons. It may seem surprising that the House of Lords which is traditionally a conservative body

and indisposed to any changes in political methods should have been so eager for the introduction of the proportional plan. The reason of course is that the Lords were shrewd enough to realize that the rise of the Labor party might soon place the other political

<sup>1</sup> A proxy paper unless cancelled in writing remains effective so long as the maker's name continues on the absent list.

parties in a minority. This is not to imply that the Lords are more sagacious than the Commons but their own vicissitudes (as a House) have perhaps imbued them with a greater respect for the rights of minorities—at least in the abstract.<sup>1</sup>

At any rate the issue dropped into the background until 1924 when a Labor ministry was in office and dependent on the support of the Liberals for keeping itself there. The Labor party had been agitating for proportional representation but when the issue now came before parliament the Labor ministry decided not to draw party lines and risk its hold on office. Instead it gave the Labor members permission to vote against the plan—which many of them did—and it was defeated. But the issue is not yet a dead one. It has occupied a prominent place in English public discussion since 1924 and will probably engage the attention of parliament before long again.

English parliamentary elections are conducted in a dignified and orderly way with very little hubbub and virtually no corruption. It was not so in the old days. Some of Hogarth's drawings give us an idea of what an English election was like in the middle of the eighteenth century. Hired bullies went about intimidating voters. Day after day while the voting continued new hogsheads of beer were tapped at the expense of the candidates. Fights between the supporters of each party were of nightly occurrence and no Marquis of Queensberry rules applied. Heads were broken and eyes blackened in the name of patriotism. An election in those days turned bedlam loose in the town. Then when the last vote had been polled and counted the successful candidate was chaired by his friends—carried unsteadily above the heads of the crowd with a motley procession of inebriates following him. It took England some time to recover from the headache of a general election in the days of the Georges.

#### ELECTION CAMPAIGNS

#### 1 IN THE OLD DAYS

#### CAMPAIGN METHODS

But now all this is changed and something ought to be said about contemporary British campaigning for the methods differ a good deal from those used in American congressional elections. In every British constituency there is, as will be explained later, a local association and

#### AT THE PRESENT TIME

Proportional representation is used in some of the university constituencies

committee for each party. Each party also has its national or central committee. The local associations are responsible for choosing their respective candidates but if no good local candidate is available or if sufficient funds cannot be raised in the constituency the central committee is usually asked to help. It responds by recommending some non-resident candidate who is able to pay his own election expenses or for whom the national organization is willing to put up the fund. In the latter case if the recommended candidate is adopted the central committee exercises a considerable influence upon the local campaign. Even among local aspirants for the party nomination the influence of the central committee is often a matter of consequence the measure of its influence being the extent to which the local campaign has to be financed from central headquarters. One of the best ways for an aspiring young man to get into the House of Commons is to do effective organizing work at the national party headquarters and eventually get recommended to some constituency which is shy of good parliamentary timber. Some outstanding English political leaders have made their start in that way.

In any case it is desirable that the candidates be placed in the field early for no man knoweth the day or the hour when an election may come. Such matters are not regulated by the calendar but are in the lap of the gods—and the prime minister. It is also desirable that the candidates should begin their campaigns early by speaking at gatherings whenever invited and by taking every means to broaden their range of acquaintance in the constituency. So they appear at public functions of every sort take an active hand in every good cause and put their names on each subscription list that comes around. In other words they submit to a good deal of polite black mailing and try to do it with smiles on their faces. All this is colloquially known as *nursing a constituency* and the zeal with which some of the Labor candidates have outnursed their rivals is highly instructive.

Usage demands that a candidate shall be open handed if he can afford it and that he shall keep on nursing his constituency after he has been elected. Does the parish church need a new bell? Or is the local boy scout troop raising a fund for a trip to London? Has the village cricket club a small deficit to be paid off or is someone needed to

THE CHOICE  
OF CANDI  
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NURSING  
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provide a prize for the game on a national bank holiday? Candidates and members are panhandled for all such things without compunction. Individuals as well as organizations come forward with their palms turned up. There are legal limits to what a candidate may spend for election expenses but there are no limits on his contributions to charity or to any public cause when an election campaign is not in progress.

Nursing a constituency is not merely a matter of spending money. It involves time and patience also. The candidate must be in evidence at church fairs and parish picnics. He must show himself betimes at Rotary Club luncheons—HOW IT IS DONE for the clubs have now invaded England. He must greet all and sundry with a cordial handshake, call them by name and show an interest in their personal affairs.<sup>1</sup> In the campaign he must address rallies, submit to heckling and canvass voters to some extent. It is no longer possible for the candidate to make a personal call on all the voters in his constituency. He must get his friends and supporters to do most of it for him. Yet Cladstone once called at 2,000 houses in the constituency of Newark, pulling the doorbells and asking for votes. He liked it so he said—and won the election.

But no amount of nursing will ensure a candidate's election if the tide is swinging strongly against him. In most cases he will come through or fall with his party in the nation as a whole. Local conditions do not usually determine the result in individual constituencies. The successful candidate is almost invariably returned to parliament not because of his personality nor because of his judgment and capacity but because of his party label. His own electioneering is far less important than the impression which his party creates in the minds of the electors.

As soon as the date of a general election is announced each candidate issues an address or manifesto to the voters of the constituency and broadcasts it through the mails. In MANIFESTO A. D. this circular he always emphasizes his party allegiance or his independent views. The laws permit each candidate to send one circular free of postage. Meetings are then arranged usually in halls but also on the street corners as is the

<sup>1</sup> For material see Frank G. J. *The Confessions of a Candidate* (London 1925).  
<sup>2</sup> W. I. Jones *et al.* *Government* (Cambridge 1936) p. 36.

fashion in American cities. At these meetings even before the candidate has had his say the members of the audience are permitted to ask questions. The privilege is mainly utilised by voters whose attitude is hostile—hecklers they are called because their aim is to heckle the candidate into saying something that can be used against him.

Heckling usually leads to a rapid fire of repartee between the floor and the platform while the audience displays its leanings by the relative amount of applause which it bestows upon the candidate and his hecklers respectively. Only a quick-witted candidate with a ready tongue can come through this sort of campaigning with success. Even when the candidate is a woman the heckling goes on. It adds zest and humor to the rallies. Lady Astor at one of her rallies was queried by a half-drunken fellow from the back of the hall: "Lady Astor, don't you sometimes wish you were a man?" Of course I do, she replied. "don't you?" The saving grace of it is the tradition of giving everybody—candidates and hecklers—a square deal. Heckling is an institution which would not be tolerable but for the British tradition of fair play. Although it seriously detracts from the decorum of an election campaign and contributes very little to the elucidation of the issues, the voters like it and would strenuously object to its discontinuance. Hence there is much complaint that the use of the radio by candidates is going to take most of the hilarity out of English election campaigns. You can turn off the radio but you can't heckle it.

To some extent the candidates appeal to the voters through newspaper advertisements and by posters on the billboards. Not so much literature is sent to voters through the mails as in America. Most candidates employ sandwich-men who walk up and down the principal streets with placards tied to them fore and aft. On them are printed the party slogans and various catch phrases important to the people to mark their ballots for somebody and Liberty or for somebody else and Cheap Bread or whatever slogan seems to fit the time and place. Cartoon posters play a prominent part in English campaigns and some of them are very forceful in the impressions which they manage to stamp on the public imagination. In the art of political cartooning England is far ahead of other countries. The billboards during an election campaign afford material for some interesting studies in the psychology of propaganda.

POLITICAL  
ADVERTISING  
IN BRITAIN  
CAPAIGNS

The most striking difference between British and American campaign methods is to be found in the vastly greater emphasis which British politicians place upon the personal solicitation of votes. There was a time when candidates for Congress were in the habit of *heeling* their districts going from door to door in quest of support but the number of voters in a congressional district is now too great for this procedure. A certain amount of personal canvassing is still carried on in the United States by each candidate's helper but this is not his main reliance for success at the polls. In England the personal canvass is reduced to a science. Each political party opens committee rooms in all parts of the constituency and at these rooms the names of all the voters in the neighborhood are arranged by streets. Friends and supporters of the candidate are then given blocks of names to be canvassed. Each name is written on a separate card with a blank space left for the canvasser's report. The cards after the voters have been visited are brought back to the committee room marked For Against or Doubtful. All the doubtful voters are then made the target of whatever influence or persuasion can be brought to bear. Attempts are also made to secure converts from among those who have been reported hostile. Nobody is overlooked in a well organized campaign.

P R O N A  
C A N V A S S I N G

Every English voter expects to be canvassed on behalf of all the candidate and feel himself slighted if he is not. The candidates and party committees by the way are not allowed to hire canvassers the laws forbid this and the whole thing has to be done by volunteers. This means of course that some of it is well done and some of it very poorly. The difficulty of conducting these personal canvasses has been much increased of course by the large expansion in the electorate due to the enfranchisement of women.

Less money on the whole is spent in English than in American political campaigns. This is partly because money for campaign funds is not so easily raised in Great Britain as in the United States and partly because an American congressional district contains so many more voters than a British constituency. Many years ago parliament passed a statute known as the Corrupt and Illegal Practices Act which aimed to eliminate electoral frauds and set a maximum limit upon campaign expenditures. This statute and amending acts makes a distinction between *corrupt* practices and *illegal* practices. Corrupt

T H E C O S T O F  
C O N T R I B U T I O N  
L E C T E D

fashion in American cities. At these meetings even before the candidate has had his say the members of the audience are permitted to ask questions. The privilege is mainly utilized by voters whose attitude is hostile—hecklers they are called because their aim is to heckle the candidate into saying something that can be used against him.

Heckling usually leads to a rapid fire of repartee between the floor and the platform while the audience displays its leanings

HECKLING by the relative amount of applause which it bestows upon the candidate and his hecklers respectively.

Only a quick witted candidate with a ready tongue can come through this sort of campaigning with success. Even when the candidate is a woman the heckling goes on. It adds zest and humor to the rallies. Lady Astor at one of her rallies was queried by a half drunken fellow from the back of the hall: "Lady Astor don't you sometimes wish you were a man?" Of course I do she replied don't you?

The saving grace of it is the tradition of giving everybody candidates and hecklers a square deal. Heckling is an institution which would not be tolerable but for the British tradition of fair play. Although it seriously detracts from the decorum of an election campaign and contributes very little to the elucidation of the issues the voters like it and would strenuously object to its discontinuance. Hence there is much complaint that the use of the radio by candidates is going to take most of the hilarity out of English election campaigns. You can turn off the radio but you can't heckle it.

To some extent the candidates appeal to the voters through newspaper advertisements and by posters on the billboards. Not

POLITICAL  
ADVERTISING  
IN BRITISH  
CAMPAIGNS  
so much literature is sent to voters through the mails as in America. Most candidates employ sandwich men who walk up and down the principal streets with placards tied to them fore and aft. On them are

printed the party slogans and various catch phrases importuning the people to mark their ballots for somebody and Liberty or for somebody else and Cheap Bread or whatever slogan seems to fit the time and place. Cartoon posters play a prominent part in English campaigns and some of them are very forceful in the impressions which they manage to stamp on the public imagination. In the art of political cartooning England is far ahead of other countries. The billboards during an election campaign afford material for some interesting studies in the psychology of propaganda.



The most striking difference between British and American campaign methods is to be found in the vastly greater emphasis, which British politicians place upon the personal solicitation of votes. There was a time when candidates for Congress were in the habit of heading their districts going from door to door in quest of support but the number of voters in a congressional district is now too great for this procedure. A certain amount of personal canvassing is still carried on in the United States by each candidate & helpers but this is not his main reliance for success at the polls. In England the personal canvass is reduced to a science. Each political party opens committee rooms in all parts of the constituency and at these rooms the names of all the voters in the neighborhood are arranged by streets. Friends and supporters of the candidate are then given blocks of names to be canvassed. Each name is written on a separate card with a blank space left for the canvasser's report. The cards after the voters have been visited are brought back to the committee room marked For, Against or Doubtful. All the doubtful voters are then made the target of whatever influence or persuasion can be brought to bear. Attempts are also made to secure converts from among those who have been reported hostile. Nobody is overlooked in a well organized campaign.

Every English voter expects to be canvassed on behalf of all the candidates and feel himself slighted if he is not. The candidates and party committees by the way are not allowed to hire canvassers the laws forbid this and the whole thing has to be done by volunteers. This means of course that some of it is well done and some of it very poorly. The difficulty of conducting these personal canvasses has been much increased of course by the large expansion in the electorate due to the enfranchisement of women.

Less money on the whole is spent in English than in American political campaigns. This is partly because money for campaign funds is not so easily raised in Great Britain as in the United States and partly because an American congressional district contains so many more voters than a British constituency. Many years ago parliament passed a statute known as the Corrupt and Illegal Practices Act which aimed to eliminate electoral frauds and set a maximum limit upon campaign expenditures. This statute and amending acts makes a distinction between corrupt practices and illegal practices. Corrupt

PERSONAL  
CANVASSING

THE COST OF  
GETTING  
ELECTED

practices include bribery intimidation personation falsifying the count—things which involve moral turpitude. Illegal practices include doings which are not wrong in themselves but which tend to make an election undignified unduly expensive to the candidates or in some other way objectionable. Hence the illegalities comprise the hiring of canvassers or bands or too many committee rooms or paying for conveyances on election day.

The laws also set a limit on legal campaign expenditures. This limit is now fixed at six pence per voter in rural constituencies and five pence per voter in urban ones—the differential being based on the idea that a rural voter is harder to reach. In a city of 40 000 voters this allows a maximum of about \$4 000. All campaign expenditures

LIMITS OF  
CAMPAIGN  
EXPENDI-  
TURES

must be made through an authorized agent of the candidate whose appointment is certified to the returning officer of the constituency. After the election this agent makes a sworn statement of all his disbursements including the personal expenses of his candidate. This last named item is important because such expenses are not usually required to be reported after American elections. At American congressional elections the maximum is \$5 000 but the number of voters is several times larger than in a British constituency.

A defeated candidate for the House of Commons may petition to have an election invalidated by alleging corrupt or illegal practices on the part of the victor or his agents. Such petitions are not heard as in America by the legislature itself they are tried by the courts. When an election protest is filed in Great Britain the issue is referred to the

ELECTION  
PROTESTS

King's Bench Division of the High Court where two judges are assigned to hear all the evidence without a jury. The court then certifies to the speaker of the House of Commons its report confirming or unseating the member-elect. It is not the practice of the judges to void an election because of merely technical violations. They require evidence that there has been corruption or illegality on a scale sufficient to have influenced the result. Hence the voiding of an election is a relatively uncommon occurrence. If the matter in dispute relates to the legal qualifications of the elected candidate and not to the manner of his election it is investigated by the House itself and is not referred to the judges of the High Court for a recommendation.

As a rule the members of parliament are brought together at the earliest possible moment after a general election. This is in accord with the spirit of the British political system which demands that members of the ministry who constitute the administrative branch of the government shall continuously possess the confidence and support of a majority in the House of Commons. And the only sure way to determine whether the ministry possesses this support is to call the House into session. So long as a ministry continues in power after a general election without summoning parliament it is technically administering the affairs of the country without a mandate from the people.

NEWLY  
ELECTED  
MP'S AS TAKE  
THEIR SEATS  
AT ONCE

**HISTORY** The history of British electoral methods is covered in Edward and Annie G. Porritt *The Unionist and the Conservative* (2nd edition 2 vols Cambridge 1909) and in Charles Seymour *Electoral Reform in England and Wales 1832-1885* (New Haven 1915). Roger's *Electors* (16th edition 3 vols edited by William Pollard London 1897) is the standard English treatise on election law but a more up-to-date volume is W. E. Davies *Parliamentary and Local Elections* (London 1936).

**ELECTION PROCEDURE AND CAMPAIGN** Present-day election procedure is described in Michael MacDonagh *The Politics of the Party* (2 vols New York 1911) Vol. I pp. 11-65 and in J. L. Seligson *Party and Election under the Reform Act of 1918* (London 1911). Frank G. Ayres *The Confessions of a Candidate* (London 1925) is an informing and amusing little volume. Attention should also be called to P. G. Cambridge *The Game of Politics* (London 1937). John M. Guss *Get the Best: A Study of Campaign Loyalty* (Chicago 1929). Lord Beveridge *Politics and the Party* (London 1925). J. K. Plock *Money and Politics* (New York, 1932) and the chapter on Public Opinion and the Parties in Herman Finer's *Theory and Practice of Modern Government* (2 vols New York 1937) Vol. I pp. 444-480 which gives a graphic account of campaign methods.

**PROPORTIONAL REPRESENTATION** On the proportional representation is a survey may be made to J. H. Humphreys *Party and the Electoral Reform* (London 1922). J. F. Williams *The Reform of Political Representation* (London 1918). G. Horne *Proportional Representation: Its Theory and Practice* (London 1915) and C. G. Hoag and G. H. Hall *The Proportional Representation* (New York 1926). Also the smaller volume by the same authors on *Proportional Representation—The First Democracy* published by the National Home Library Foundation (Washington 1937).

## CHAPTER XI

### THE HOUSE OF COMMONS ITS ORGANIZATION

With all humble and due respect to Your Majesty our privileges and liberties are our right and due inheritance no less than our lands and goods they cannot be withheld from us diminished impaired but with apparent wrong to the whole state of the realm.—*The Commons Appeal of 1604*

Six hundred talking asses set to make laws and to administer the concerns of the greatest empire the world has ever seen. In one of his irritable moments (which came all too frequently) Thomas Carlyle thus epitomized the most powerful and the most interesting of imperial legislatures.

As a representative lawmaking body the British House of Commons has no rival in age for nearly six centuries have run their course since the faithful Commons began to function as a separate chamber. But it is not alone that gives the House of Commons its high place among the lawmaking bodies of the present day. It is a legislature with virtually unlimited authority. Its powers are unique in their range and in the absence of constitutional restraint. Parliament and the House of Commons are to all intents one and the same thing. The House has supremacy in lawmaking; it controls the finances of the realm; fixes the jurisdiction of the courts; and dominates the action of the crown. The procedure of this House moreover is far more picturesque than that of any other representative chamber. It used to be said that the House of Commons was the best club in London and certainly there is no other legislative body that commands a keener rivalry for admission. It is an institution of which Englishmen are proud and justly so.

For many centuries the House of Commons has held its sessions at Westminster, a city which has now become a part of Greater London. Originally it met in the chapter house or refectory of Westminster Abbey, a structure which dates from the time of Edward the Confessor, last of the Saxon kings. Then the Commons moved to St. Stephen's Chapel.

THE OLD R  
ESTING  
PLACES.

within the palace of Westminster where it continued its sessions right through the eras of Tudors, Stuarts and Hanoverians until 1834 when the palace was gutted by fire. Thereupon the new palace of Westminster or the Houses of Parliament, as the great structure is now called, was erected during the years 1837-1852.

The Houses of Parliament flank the left shore of the Thames midway between Chelsea Bridge and the Tower of London. Covering an area of nine acres they form a vast edifice containing more than twelve hundred rooms, the largest building in Europe with the exception of the Vatican.

WHERE THE  
HOUSE NOW  
SITS.

The architecture of the building is Tudor Gothic and it is said to be the most impressive Gothic structure in existence. In the heart of the pile is a great central hall. To the south of this hall is the green chamber of the House of Commons and to the north of it the red chamber of the House of Lords. Reaching out around these two great chambers is a labyrinth of lobbies, corridors, committee rooms, offices, retiring rooms and other subsidiaries. In various parts of the building likewise there are libraries, dining halls and smoking rooms as well as living quarters for certain officers of parliament such as the speaker, the clerk, and the sergeant at arms.

The chamber occupied by the House of Commons is cut off from all external outlook. The only light comes from windows above. The room is oblong in shape with a broad aisle running down the center. At one end of this aisle is the entrance; at the other end the speaker's

THE COM-  
MONS  
CHAMBER.

chair is placed. There is a sliding brass rail or barrier at the entrance alongside which sits the sergeant at arms. Not but members are permitted to pass this entrance which is called the bar of the House. On either side of the aisle are long benches upholstered in green leather rising tier on tier. The members sit (or sprawl) on these benches with no desks in front of them. No seats are assigned to individual members. It is odd by the way that this best club should have such deficient accommodation. By crowding into the benches and using some reserved space in the side galleries it is possible to provide seats for about 450 members but the total membership of the House is more than 600 which means that with anything like a full attendance many are compelled to stand.

But anything like a full attendance is a rare occurrence. Two hundred is deemed to be a good turnout unless something of great interest is under discussion. Although no seats are regularly as-

signed those members who support the ministry customarily occupy the benches to the speaker's right while members of the opposition sit on his left<sup>1</sup>. The two front benches which face each other nearest the speaker's chair are known as the Treasury bench and the front Opposition bench respectively. The custom of the House is that members of the ministry sit on the one and the leading personages of the opposition on the other.

Although members of the House are elected by districts or constituencies they look upon themselves as representatives of the United Kingdom at large. They do not think of their own districts first and last and all the time as many American congressmen and French deputies do. The House is both a representative and deliberative body but deliberation is stressed more than representation. Is it proper that this should be so? Should a legislator be guided by his own conscience and patriotism or should he always defer to the interests and desires of the constituents who elected him?

That is an old question. A hundred and seventy years ago Edmund Burke dealt with it on the hustings at Bristol and his speech has become a classic on one side of the controversy. Burke declared that a member of the House ought to maintain the most unreserved communication with the voters of his constituency; he ought to discover their wishes and give such desires great weight. To that extent he should serve as their delegate. But his own opinions, his mature judgment and his enlightened conscience, Burke went on to say, should not be sacrificed by a member of parliament to any man or any set of men, constituents or outsiders. A member's conscience is a trust from Providence for the abuse of which he is deeply answerable. He does not derive his conscience from the laws or the constitution.

Your representative owes you not his industry only but his judgment also and he betrays instead of serves you if he sacrifices it to your opinions.

Some years later at the election of 1780 Burke returned to a defence of his position. In another striking speech he declared to his constituents: I did not obey your instructions. No I conformed to the instructions of truth and nature. But this defence did not

<sup>1</sup>When the ministerial party has large majority however the overflow goes to the left also.

avail. The resentment of the Bristol voters against Burke's defiance of their wishes was too strong to overcome and he was obliged to retire from the contest badly beaten. During the past century the constituency of Bristol has been roundly condemned by political philosophers for having placed its own selfish interest ahead of parliamentary independence and thus repudiating so distinguished a representative but are there many election districts in any country that would not do the same if the issue were boldly presented to them as it was in this instance?

The chief function of the House of Commons is to protect the people's rights and to assure their liberties. It was for the attainment of these ends that the House developed. But to whom other than to themselves can the determination of the people's rights and liberties be entrusted? A government in which a few people, however chosen, determine at their own discretion what the rights of other people are—such a government would not be a representative government. The will of the voters may be capricious and their opinions occasionally erratic but is there any guarantee that the will and opinions of an irresponsible parliament would be less so? The world has tried many ways of winnowing the politically wise from the foolish—birth, education, lot, election—but the experience of centuries has taught that by any of these methods you get a lot of chaff with the wheat. There is no reason to believe that the judgment of representatives in the long run and on the average is of higher quality than the public opinion of those who have chosen them. That is the ultimate justification of the delegate theory which Burke scorned.

On the first day of the session the members of the Commons assemble in their own chamber. If it is a new parliament that is a parliament meeting for the first time after a general election the members must begin by electing a speaker. But by an ancient tradition they cannot do this until the lord chancellor, in the name of the crown, directs it to be done and by usage he does this from his place in the House of Lords. So the commoners spend a few minutes in a buzz of conversation until the official messenger of the Lords (commonly known as Black Rod) appears and invites the House to come

A WORD IN  
DEFENCE OF  
THE DELEGATE  
THEORY

HOW THE  
HOUSE DOES  
ITS WORK.

He is then called Gentleman Usher of the Black Rod. His insignia of office is a bonyon topped with gold.

across the hall Whereupon headed by the clerk of the House, the commoners troop through the great corridor to the bar of the Lords where they stand in silence while the lord chancellor announces

*His Majesty's pleasure is that you proceed to the choice of some discreet and learned person to be your speaker* Then the commoners without a word in reply wander back to their own chamber and with the clerk of the House as their temporary mentor proceed to do as they have been bidden

The election of a speaker as will be indicated a little later is usually a mere matter of form and takes but a moment. The

choice must be approved by the crown, but this also  
 ELECTING A SPEAKER. is a mere formality the royal approbation being announced to the Commons by the lord chancellor

The speaker now takes the oath of allegiance and the members, in groups of five at a time do likewise Then comes another call to the House of Lords to hear the speech from the throne<sup>1</sup> Preceded this time by the sergeant at arms the members once more betake themselves to the gilded chamber where they crowd into the rear portion of it and into the galleries as best they can

The speech from the throne is delivered either by the monarch in person or by someone whom he designates for this duty It is

never a long address and its delivery usually consumes but a few minutes As has already been mentioned it is prepared by the prime minister in consultation with his cabinet. It comments upon the general state

of the realm, adds a paragraph or two on foreign relations, fore shadows the more important government measures which are to be introduced, and invites the House of Commons to grant the appropriations needed for carrying on the government But whatever the speech may contain the king has had little or nothing to do with its preparation He may and sometimes does, have a poor opinion of it Did I deliver the speech well? asked George III on one occasion Very well Your Majesty was the reply Well I'm glad answered the king for there was nothing in it

When the speech is finished the commoners return to their own chamber where the speech is reread to them by the speaker Before this is done, however the House advances a dummy bill through its

In the case of a newly-elected parliament the election of the speaker takes place on the first day and the speech from the throne is delivered on the day following



first stage This is done to demonstrate that it can do business on its own authority without waiting for a message from the crown The bill selected for this purpose is always the same namely A Bill for the Better Preventing of Clandestine Outlawries It has been given its first reading at every parliament for nearly a hundred years but is never advanced to a second reading

Then the House proceeds to debate an address in reply to the speech from the throne This address is always in common form being merely an expression of loyalty to the crown and of satisfaction with the recommendations made Its adoption is moved and seconded by two private member from the ministerial side of the House who are designated for this purpose by the prime minister The opposition may then propose amendments to the address in which case the first debate of the session is precipitated As a rule however the address is adopted without change and the House is then ready to plunge into its routine business

The House of Commons meets on Mondays Tuesdays Wednesdays and Thursdays at quarter to three o'clock in the afternoon On Fridays it meets at eleven in the forenoon These Friday sittings are reserved for private business motions petitions and notices No meetings are ordinarily held on Saturday the chamber being thrown open to visitors on that day The forenoons are kept free for committee work The sittings of the House usually last through the afternoon and into the evening There is no regular adjournment for the evening dinner hour but the chamber is usually well emptied between the hours of seven and nine unless business of an exciting nature is before the House The rule is that opposed business may not be proceeded with after eleven o'clock at night unless on motion of a minister but unopposed business may be continued for a half hour later At 11 30 the House adjourns unless certain specified measures are under consideration in which case it may remain in session all night and even through the whole of the next day The Friday sittings always close at 4 30 P M no matter what business is under consideration

Despite this possibility of all night sessions the rules of the House

The first sitting of the House with the Duke of Wellington was held on Monday afternoon 11 Wednesday morning during the session of 1881

permit the application of the closure in order to shut off debate as will later be explained and the ministers regularly ask the House to limit debate in this way whenever the dilatory tactics of the opposition are seriously interfering with the progress of government measures. Forty members of the House constitute a quorum which is only about seven per cent of the entire membership. In the American House of Representatives the requirement is a majority or two hundred and eighteen members. Although the actual attendance at sittings of the House of Commons is relatively slim many other members are within reach in the lobbies the smoking room the library the restaurant or during fine afternoons on the terrace. They are at hand when needed—if any question is pressed to a vote. But when the House is plodding its way through routine matters the back benches yawn in emptiness. In fact a great deal of business is done with fewer than forty members present in other words without a quorum for the speaker pays no attention to the quorum requirement unless some member asks for a count.

#### THE SPEAKER

The speaker is the most conspicuous figure in the House.<sup>1</sup> Despite his title he never speaks in debate nor does he say more than a minimum in any other connection. He is supposed to speak for the House not to it. His position is as old as the House itself and his title is derived from the fact that he alone in early days had the right to speak for the House of Commons before the king. Originally the speaker's chief function was to take petitions and resolutions from the House and lay them before the king for it will be recalled that in early days the House of Commons was a petitioning rather than a lawmaking body. The House besought the king to redress grievances by making laws and the king complied when he felt so inclined. The speaker was merely the bearer of these numerous and sometimes unwelcome requests. Hence his post in early days was no sinecure for if the monarch happened to be out of humor Mr. Speaker sometimes found himself hustled off to the Tower.

In addition to the speaker the chief officers of the House are the clerk and the sergeant at arms. Both are appointed by the crown on the advice of the prime minister and both hold office for life. The clerk and his assistant receive charge of the House records the sergeant at arms has various ceremonial functions and is the agent of the House in the exercise of its authority.

The first to bear the title of speaker was Sir Thomas Hungerford in 1376. For several centuries the office was usually held by a lawyer and some noted jurists figure on the lists of speakers including Sir Thomas More and Sir Edward Coke. O IS NOTABLE  
S EAKERS When the crown and parliament came into conflict as so often happened during the Stuart era the speaker had to be a rare diplomat in order to keep from incurring the wrath of the one or the other. Students of English constitutional history will recall for example the case of Sir William Lenthall who was speaker of the House when Charles I strode into the chamber with a troop of soldiers and tried to arrest five of its members. But the offending members had been warned and were gone from the chamber before the king arrived. Advancing to the speaker's chair the king demanded to know whether any of the five members were present. Lenthall fell on his knees and replied: "May it please Your Majesty I have neither eyes to see nor tongue to speak in this place save as this House is pleased to direct me. I see," said the king, "that my birds are flown" and with that he stalked out of the House amid cries of "Privilege! Privilege!"

Although the choice of a speaker must be approved by the king it is inconceivable that this approval will ever be refused for the selection is really made by the prime minister before the House acts at all. In other words the prime minister selects the speaker after consultation with the members of his cabinet and after assuring himself that the choice is generally acceptable to the House. The nomination is then made and seconded by two private members in order to perpetuate the fiction that the choice is that of the whole House and not that of the ministers. Both the House and the king accept this nomination as a matter of course, for neither could refuse their concurrence without registering a lack of confidence in the ministry. OW TH  
S EAKER IS  
CHOSE.

So when the prime minister has chosen his man all else is more routine. The so-called election by the House is not an election but a pantomime. The clerk starts the proceedings. An ancient custom forbids him to utter a syllable so he merely points with his right forefinger at some member of the House whose name has been given to him as mover of the TH CTUR  
ESQ "E  
A. TO UME.

The approval of the crown has ever been denied in the principal ministerial responsibility became recognized. The last refusal was in the case of Edward Seymour (1637).

motion This member thereupon rises and moves that so-and so do take the chair of this House as speaker Then the clerk in the same dumb pantomime indicates the other member who has been picked to second the motion The speaker designate then rises in his place and humbly submits himself to the will of the House which acclaims him with cheers<sup>1</sup>

The motion to elect is not customarily put to a vote for there is no contest save on the rarest occasions The speaker who has served in the preceding parliament is by custom always reelected even though the ministry has changed It has not been uncommon therefore for a Liberal to serve as speaker with the Conservatives in power and vice versa If a speaker dies or does not return as a member of the new parliament the prime minister makes a new choice usually designating the deputy speaker for promotion to the speakership Occasionally however the opposition also puts up a candidate and a vote has to be taken

The speaker from the moment he takes the chair ceases to be a party man He discards his party colors be they buff or blue or red He is no longer a Liberal a Conservative or a Labor partisan He attends no more party gatherings and is not called into consultation on any matters of party policy He must be a neutral in politics This neutrality moreover is not a fiction as is shown by the fact that the speaker is never opposed for reelection in his own constituency At each general election his constituency (in accordance with a local party armistice) sends him back to parliament unopposed—so long as he remains speaker Politics is adjourned in the speaker's bailiwick When a member of the House of Commons is chosen to the speakership therefore he need give no further thought to the repair of his own political ramparts He has made his calling and election sure

No wonder the speakership is regarded as a prize an office not only of great honor but of long tenure Its emoluments are also substantial The speaker receives a liberal salary he has an official residence in Westminster Palace and he gets both a pension and a peerage when he retires But every rose has its thorn and the speaker must accept with his office a

THE SPEAKER  
A NON PARTISAN  
PRESTIGE OF  
THE OFFICE

<sup>1</sup> For a detailed account of the procedure see N. L. Hill and H. W. Stoll *The Background of European Governments* (New York 1935) pp 124-130

Both the peerage and the pension are matters of usage There is no statutory provision that the speaker shall have the British when a speaker retires it is the custom of the House to present an address to the speaker and his wife

sentence of exile from politics That comes hard to one who likes the wager of battle Whether in entertaining his friends at dinner or in recognizing members who desire to speak or in ruling on points of order he must act with the impartiality of a chief justice If he has personal and political likes or dislikes as most public men have he must somehow manage to keep them submerged

Even when called upon to give the casting vote in case of a tie the English speaker does not act in accord with his own political or personal opinions He breaks a tie by voting in obedience to certain well established principles If for example his negative vote would determine the defeat of a measure while his affirmative vote would prolong its consideration the speaker always votes Aye If a tie comes on a proposal to adjourn the debate he always votes No If he be in doubt as to how he should vote or as to the proper ruling on any question of order or privilege he inquires from the clerk of the House who is a skilled parliamentarian The speaker's rulings on points of order are final they may not be appealed to the House The speaker may if he desires submit any questions to the House for its opinion and may be guided by its decision but when he makes a ruling on his own responsibility there is no overriding it The House on the other hand can suspend its own rules by a majority vote at any time and thereby circumvent a speaker's ruling but it very rarely finds occasion for doing so The rules are suspended now and then but not for this purpose

THE SPEAKER  
WORK

The speaker's chair is a high canopied throne at the head of the main aisle Below and in front of it is the clerk's table At the appointed hour for opening a sitting of the House the speaker's procession formally enters the chamber Prayers are read by the chaplain the mace is laid on the table and the speaker counts the members to ascertain the presence of a quorum If forty members are not in the chamber he takes a sandglass which is kept at his right hand and turns it over Meanwhile the bells in the corridors lobbies reading rooms smoking rooms and library begin to tinkle The sand takes about two minutes to run from one of the glass compartments into the other and if a second count at the expiration of this interval discloses

HOW THE  
U O

to the money for the crown asks for the peerage for the  
is within the gift of the crown with the privilege to return. In 1928 the re-  
turning peer Mr. J. H. Whitley declined this honor

fewer than forty members the speaker may adjourn the sitting.<sup>1</sup> The same procedure is gone through whenever anyone after the sitting has begun raises the question of a quorum. Adjournments for want of a quorum take place very seldom for it is a rare occasion when fewer than forty members are not somewhere within call. It is the business of the whips (of whom more will be said hereafter) to see that these members are rounded up when needed.

#### ROUTINE PROCEDURE OF THE HOUSE

There is a common impression among Englishmen that the House of Commons unlike other legislative bodies has no printed rules.

THE RULES OF THE HOUSE This popular impression is the basis of the hackneyed tale about a new member who went to the clerk's desk on the first day and asked for a book of rules. There is no book of rules replied the clerk. Then how am I to learn the rules of the House? queried the neophyte. By breaking them sir came the answer. It is true that the House has no book of rules but its standing orders amount to the same thing although it may be added that these standing orders do not cover the whole procedure of the House much of which rests upon usage. And the usages are not all to be found in any printed book.<sup>2</sup> Many years of parliamentary experience are required to familiarize a member with all the intricacies of parliamentary procedure and in that sense it can truthfully be said that new members learn the rules by breaking them and being called to order.

Unlike those of Congress the rules and standing orders of the Commons are permanent. They do not have to be readopted after each general election. Nor have they the rigidity of congressional rules inasmuch as they can be suspended at any time or amended or repealed by a majority vote. One might think this is a dangerous power to place in the hands of the majority but it has not been abused. When the rules of the House are suspended it is usually for the sole purpose of expediting business with the consent of the minority and not as a means of putting legislation through by steam roller methods.

THE R P R MANENCE If however business before the House be the consideration of a message from the crown it is proceeded with despite the presence of fewer than forty members.

Most of them however are in S. Erskine May's book on parliamentary procedure which is the English parliamentary Bible just as Asher C. Hinds' *Precedent* serves a like purpose in the American House of Representatives.

Most of the standing orders deal with the allocation of time for different classes of business (such as government measures private bills private members bills and questions) and with the course of procedure which these various matters must take. Measures introduced by the ministry as will be more fully explained later have the right of way. Private members bills are crowded into odd hours. At the commencement of each daily sitting a limited amount of time not exceeding an hour is set apart for questions. This is a feature of English parliamentary procedure which has no counterpart in American legislatures. These questions which may be asked by any member are addressed to the minister within whose field the matter belongs or if the minister be a member of the House of Lords to his representative in the Commons. No member may ask more than four questions at a single sitting. Save in exceptional cases it is required that due notice of intention to ask questions shall be given and the questions then appear on a printed list which each member receives at the beginning of the sitting. The questions are restricted to requests for information and must not contain any argument inference imputation epithet or ironical expression. But some questions come perilously near offending in this way and the speaker of the House in such cases may reframe them or even reject them altogether. The minister to whom a question is addressed may decline to answer it if it deals with some matter of diplomatic or domestic policy which ought to be kept confidential.

NATUR O  
THE RU ES

TH QUES  
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H RACTE  
O TH Q'ES-  
TIO A K D  
N TH O'S

When question time arrives in the House therefore the members flock into their seats for the interrogations and answers are a daily source of enlightenment—and often of amusement. I beg to ask the chancellor of the exchequer question number one says a member from one of the rear opposition benches. There is a fluttering of leaves as everyone turns to the question list printed on the Orders of the Day. Then the chancellor of the exchequer or his parliamentary secretary rising from the Treasury bench proceeds to read the answer from the typeset sheets in his hand. Sometimes it is a long explanation sometimes a single curt sentence. Following the explanation supplementary questions may be asked but no debate or discussion follows the giving of replies.

Herein the procedure differs widely from the interpellation in the

French Chamber of Deputies where as will be seen later the minister's reply is always followed by a debate and a vote. When a minister answers any question in the House of Commons there is no way of determining whether a majority of the members regard the answer as satisfactory. The House merely proceeds to the next item on the notice paper. At the close of the question period however any forty members can precipitate a discussion of a minister's reply by rising in support of a motion to adjourn. Then if the speaker of the House accepts this motion as falling within the principles on which such motions are permitted a debate is set for the same evening. But this procedure is not common. Large numbers of questions are placed on the Orders many of them dealing with very trivial matters. They average from one hundred and fifty to two hundred per day.<sup>1</sup> Some years ago a committee which investigated the possibility of cutting the expenses of government made an estimate that the preparation of answers cost the English taxpayer about seven dollars and a half per question.

But members of the Commons value their right to ask questions and would not permit it to be curtailed. The moral effect upon the ministers is good for they know that any administrative action however unimportant, may be dragged out into the glare of publicity. Hence they must be vigilant during every question hour. Many of the questions seem trivial but the ministers have learned that more may lurk in a question than appears on the surface. An innocent looking query is sometimes propounded with intent to draw an offhand answer. Then comes a supplementary question which discloses what the questioner is really gunning for. The ministers are aware of all this (having been themselves the framers of questions while in opposition) and nowa days they are not easily trapped.

The importance of the question hour with all that it implies has not been sufficiently appreciated by foreign students of English government. It is an effective check upon those bureaucratic tendencies which are bound to appear in every government. It keeps the experts responsive to a body of laymen. Ministers get irritated at the flood of questions and their subordinates (who have to pre-

<sup>1</sup> If the end of the question hour arrives before all the questions have been answered the remaining answers are printed in the official report of the House proceedings.



pare the answers) blaspheme at the members who frame them but the private citizen has no reason to complain. The question hour in the House of Commons is probably worth all that it costs the British taxpayer.

While there is no opportunity for debate in connection with the questions there is room for plenty of it at various stages in the passage of legislative measures. Most speeches in the House of Commons are short; it is quite unusual for anyone to speak longer than an hour, although this occasionally happens when measures of great importance are under discussion. The longest speech according to the records was a deliverance by Brougham who spoke for more than six hours in 1828 to a thin and exhausted House. Prynne's historic plea for the life of Charles I (1648) occupied almost the same length of time and Gladstone on one occasion spoke for five hours.<sup>1</sup> No time limit is fixed by the rules. But there is a limit to the patience of the members and even the whips cannot always keep a quorum when long-winded orators take the floor. Speeches whatever their length are recorded verbatim and published in bulky volumes known as the *Parliamentary Debates* or more commonly as *Hansard*. An hour's speech occupies fifteen or sixteen columns of this publication; hence a single debate may occupy a hundred pages or more.

#### THE COMMITTEE SYSTEM

In legislative bodies throughout the world a large part of the preliminary work is assigned to committees. The House of Commons is no exception. All bills now go automatically to one of its regular committees unless the House votes otherwise in particular cases. These committees are of various types. First there are the *standing committees* on public bills as they are called—committees which are appointed at the opening of a session and remain unchanged until parliament is prorogued. To these standing committees of which there are now five in all certain classes of public bills

DEBATES IN  
THE HOUSE

COMMITTEES  
OF THE HOUSE

STANDING  
COMMITTEES

Not the first of these would record Pliny's speech in the Roman Senate of even hours. Several filibustering speeches in Congress have been longer than Pliny's.

These debates were regularly published by private name as *Hansard* as a private enterprise. They are now issued as an official publication under the control of the House.

are referred each committee receiving the measures which the speaker assigns to it in accordance with the established rules. Second there are *select* committees on public bills appointed to consider and report upon individual measures or questions which involve some new principle or upon some subject which has not yet come before the House in the form of a bill. They gather information examine witnesses and so on. When their work is done they make a report and go out of existence. Third there are some *sessional* committees appointed for a single session to deal with certain designated matters such as the examination of petitions. Fourth and highly important are the *committees on private bills* of which more will be said later.<sup>1</sup>

Finally there is the Committee of the Whole House. In other words the entire House sits as a committee the speaker leaves the chair and his place is taken by a chairman who is appointed afresh in each new parliament and is a staunch party man the mace is placed under the table as a sign that the House as a House has adjourned. When the House resolves itself into Committee of the Whole its rules of procedure are relaxed a member may speak several times on the same question if he desires motions do not need a seconder and any matter which is voted upon can easily be opened for reconsideration. Because procedure in the Committee of the Whole House is so simple and flexible the practice of considering the details of measures in this way has proved popular not only in the House of Commons at Westminster but in the House of Representatives at Washington.<sup>2</sup> It makes for informality if not for speed. When the Committee of the Whole House has finished with its consideration of a measure item by item a motion is made that the committee rise and report. The speaker then resumes the chair and the chairman reports the committee's action in other words the House reports to itself and then proceeds to adopt its own recommendations.

In American legislative bodies with the exception of the two

Pp 215-19

<sup>1</sup> He does not sit on the speaker's throne but at the clerk's table.

<sup>2</sup> When the House of Commons discussing revenue measures the Committee of the Whole House is called the Committee of Ways and Means when it is considering appropriations or expenditures it is called the Committee of Supply. Colloquially the members speak of the House in Ways and Means or the House in Supply.

Houses of Congress all committees (apart from the Committee of the Whole) are ordinarily appointed by the presiding officer. This is true of most state legislatures, city councils and indeed of unofficial organizations. In the House of Representatives at Washington the appointment of committees was for a long time in the hands of the speaker and this prerogative made him the virtual master of business. During the years 1910-1911 however the rules of the House of Representatives were changed and the power of appointing committees was taken from the speaker. Committees in both branches of Congress are now appointed in a roundabout way by the Senate and the House themselves.<sup>1</sup> In the House of Commons the speaker has never had at any time the function of appointing committees. To give him this power would be to make his office the very negation of what it is supposed to be, namely a sanctuary of neutrality amid the warring factions of partisanship.

HOW COMMITTEES ARE CHOSEN IN AMERICA

Committees in the House of Commons (with the exception of the Committee of the Whole House) are chosen by a committee of selection. This committee of selection which contains eleven members is named by the House itself at the beginning of each parliamentary session. But whilst ostensibly named by the House itself the membership of the committee of selection is arranged in advance by a conference between the prime minister and the leader of the opposition. In making up the various committees this committee of selection does not pay strict attention to party lines although members of the different parties are selected in something like the proportion that they have in the House as a whole. Nor does it give undue attention to seniority as is the case at Washington. Each standing committee ordinarily contains from thirty to fifty members but the standing orders of the House provide that from ten to thirty-five supernumerary members may be added to serve during the consideration of any designated measure the design being to strengthen the committee when some matter requiring special knowledge is before it. Select committees are much smaller they usually have fifteen members while the committees on private bills

HOW COMMITTEES ARE CHOSEN IN ENGLAND

<sup>1</sup> See the *Great American Union* (4th edn New York 1936) pp. 20-27, 31-35.

Nowadays however the names of the persons who constitute new select committees are usually decided in the manner which proposes such a committee.

have four members only. Each committee in the House of Commons has a chairman, but this official is neither named by the committee of selection, as is the practice in Congress, nor chosen by the committee itself. Instead, the committee of selection names a panel of chairmen and this panel chooses from its own membership a chairman for each committee.<sup>1</sup>

The cabinet is not officially ranked as a committee of the House of Commons, yet it is in fact the greatest parliamentary committee of them all. It is the steering committee. It is the originator and the censor of all important business. Nothing of any general importance has much chance of getting through the House of Commons unless the ministry favors it or at least refrains from opposing it; on the other hand, a measure has every chance of passing if the cabinet lends its support. There are exceptions to this general rule, of course, and these exceptions are naturally more frequent when a ministry is in office without having a majority of its own party behind it—as has happened in the case of the two Labor cabinets. But when a ministry controls a majority, as it usually does, there is no gainsaying its mastery of the legislative program.

Nevertheless, the cabinet's control of committees is by no means so strong as its control of the House. Party discipline is not so strict in the one as in the other. Hence it frequently happens that a standing committee amends a bill in a way which the ministers do not like. The minister in charge of the bill must then decide (usually in consultation with his colleagues) whether he will accept the amendment or ask the House to strike it out when the committee reports the bill. This the House will do if the ministry insists, but coercive tactics are not popular in England and the ministers often find it wise to concede or to compromise. In any event, the minister in charge of a government measure must familiarize himself with every detail of it, must follow its course day by day in committee, and must guide it through the House. It is for this reason that the ministers are the real leaders of the Commons and collectively form the great standing committee of parliament.

The House of Commons has too much to do. Its members cannot, and do not, familiarize themselves with even a small portion of

<sup>1</sup> In the case of the committees on private bills, however, the chairman is designated by the committee of selection.

the legislation (including private bills) which they enact. Instead of controlling the policy of the government the majority merely acclaims it while the minority criticizes it in neither case is there always a clear understanding of what the policy is. The state legislatures in the United States take much of the legislative burden off Congress but there are no state legislatures in England. As a remedy for the congestion of business in parliament it has been suggested that regional governments should be established and some of the work devolved upon them. Scotland and Wales would each be given their own regional legislatures with a certain sphere of legislative authority assigned to them. England would be divided into provinces and dealt with similarly. Northern Ireland is already equipped in this way. The idea of regional devolution has been much discussed but nothing has yet come of it.<sup>1</sup>

CONGESTION  
OF BUSINESS  
AND THE  
PROPOSED  
REMEDY

#### ANALOGIES AND CONTRASTS

Between the House of Representatives and the House of Commons there are many analogies and contrasts. Although one is child of the other and bears unmistakably the marks of its parentage the difference in environment has not been without its effect upon both structure and temperament. The House of Commons is the larger body but it makes a much poorer showing in point of consistent attendance. It is a less animated body with less noise and bustle and racket on its floor. Looking down from the visitors' gallery one sees the sprinkling of members loitering about on the benches some chatting with their neighbors a few paying perfunctory attention to what is going on and still fewer wholeheartedly interested in the proceedings. The atmosphere is one of nonchalance and leisure. The House of Representatives on the other hand seems to a visitor in the gallery to be rushing its business at breakneck speed with a bumper attendance of members all of them busy earnest, scurrying in and out, and with several congressmen seemingly desiring to speak at once. The atmosphere at the Capitol has no aroma of leisure. It can all be summed

THE HOUSE OF  
COMMONS AND  
THE HOUSE OF  
REPRESENTATIVES  
COMPARED

IN GENERAL  
ATMOSPHERE

<sup>1</sup> The subject is discussed at length by W. H. Chubb in his *Democracy at the Capitol* (New York 1916). Alternative methods of improving the work of the House (by reducing the number of members etc.) are put forward in W. I. Jennings' *Parliamentary Reform* (London, 1934).

up in the saying that one body is English while the other is American

In America the speaker of the House is always a party man chosen by a caucus of the majority members. His election is always

THE TV O  
SPEAKERS

opposed by the House minority and when he takes the chair he does not discard his party allegiance. On the contrary he sometimes becomes a more aggressive

partisan than he was before. The standing committees of the House of Representatives are much more numerous than those of the House of Commons and (with one exception) are considerably smaller in membership. In Congress the chairman of each committee is designated when the committee is formed and the chairmanship almost always goes to the senior majority member that is to the member from the dominant party who has served longest on the committee.<sup>1</sup> In the House of Commons seniority of service also counts in the sense that a young or inexperienced member is not made chairman of an important standing committee but among older and more experienced committeemen no stress is laid on relative length of service. Personal ability and the capacity to preside are what count at Westminster when chairmanships are being allotted.

Another difference is that at Washington all measures including money bills go to a standing committee before being taken up by

CLASSIFICA  
TION OF BILLS

the House of Representatives in Committee of the Whole whereas in England money bills go to this latter committee directly. Congress makes no distinction moreover between public and private bills in the English

sense. Whether bills are general or special in their scope they all go to the regular committees. Most of the bills which go to committees in the House of Representatives never come back again; they die and are buried in the committee's files. In the House of Commons on the other hand every committee must return all the bills assigned to it for consideration. Again the dominant party in the House of Representatives always obtains a majority on every important committee a majority which is usually sufficient to ensure its control of the committee's action. In the House of Commons this is not necessarily the case. The standing committees are made up in a manner favorable to the majority party in the House but the committees on private bills have only four members each and are constituted without any reference to party affiliations.

<sup>1</sup> The next member in order of seniority is known in congressional parlance as the ranking member.

Finally the most important of all contrasts is to be found in the fact that the cabinet of the United States has no direct connection with the process of lawmaking. It is not a steering committee of Congress and Congress would resent its assumption of any such role. By virtue of the ministerial system the House of Commons is provided with a strong group of executive leaders who guide and virtually dominate its work. In the older textbooks on English government it is commonly stated that the House of Commons controls the cabinet. Fundamentally that is true for the House can dismiss the cabinet from office at any time. But it is equally true that the cabinet controls the House. Business is done because the cabinet leads and the House follows. It may refuse to follow, to be sure, but the fact remains that it rarely does so under any circumstances and practically never when the cabinet system is functioning as the theory of English government expects it to function. But the House of Representatives feels itself at liberty to bolt presidential leadership at any time and on any question. In no sense does the cabinet control the House at Washington.

The House of Commons must be summoned into session at least once a year or, to put it more accurately, there must not be more than a twelve month interval between the close of one session and the beginning of another. A session usually lasts from five to seven months. The House is ordinarily called together early in November. It adjourns from just before Christmas until late in January. Then it resumes and continues to sit until June or July, or perhaps a little later, with brief adjournments over week ends and holidays. Each House may adjourn without reference to the other, which is not the rule at Washington. The President of the United States can adjourn Congress in case the two Houses fail to agree on adjournment; the crown in England cannot adjourn either House. But when the cabinet decides that it is time to bring a parliamentary session to a close, it so informs the king and parliament accordingly prorogued. Both Lord and Commons are prorogued together. Prorogation terminates all pending business, hence a measure which has not been finally passed by both Houses at the date of prorogation must be introduced anew at the next session and must go through all its stages over again in order to become a law. When parliament has run its legal course of five years, or when the cabinet at an earlier date desires a general election, the crown dissolves the House

LEADERSHIP

ANNUAL  
SESSION

and summons a new parliament. The terms adjournment, prorogation and dissolution refer therefore to the end of a sitting, the end of a session and the end of a parliament.

In summoning parliament both the Lords and Commons are invariably called to meet at the same time. In the United States the Senate may be called into session and sometimes has been so called without the House of Representatives. This is because its action may be needed to confirm presidential appointments or to ratify treaties. The British House of Lords has no powers of this character and there is accordingly no reason why it should meet when the Commons is not in session. Even for impeachments the initiative of the latter is essential.

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The organization of the House of Commons is a theme which has been dealt with in many books. Short descriptions may be found in Sir John A. R. Marriott *Mechanism of the Modern State* (2 vols. Oxford, 1927) Vol. I pp. 507-532; Sir William R. Anson *Law and Custom of the Constitution* (5th edition Oxford 1922) Vol. I pp. 253-321; and Frederic A. Ogg *English Government and Politics* (2nd edition New York, 1936) pp. 363-394.

More elaborately the topic is discussed in Herman F.ner *Theory and Practice of Modern Government* (2 vols. New York 1932) pp. 780-877; G. F. M. Champion *An Introduction to the Practice of the House of Commons* (London 1929); Sir Thomas Erskine May *Parliamentary Practice* (13th edition London 1924); Josef Redlich, *The Procedure of the House of Commons* (3 vols. London 1908); Michael MacDonagh *The Pattern of Parliament* (2 vols. New York 1921); H. Graham, *The Mother of Parliaments* (Boston 1911); Sir Henry Lucy *Lords and Commons* (London 1921); Robert Luce *Legislative Procedure* (Boston 1922) *passim*; and A. I. Dasent, *The Speakers of the House of Commons* (New York 1911).

The *Standing Orders of the House of Commons* (revised and republished every few years) should of course be consulted.



## CHAPTER XII

### THE PROCESS OF LAWMAKING IN PARLIAMENT

The House of Commons is a very clumsy machine but it works and on the whole it turns out a good deal of work. It would be a better machine if men were a little less inclined to silence. —*John Bright*

In the early stages of its history the House of Commons took no part in the formal enactment of laws. It merely petitioned the crown to make laws. Laws based upon the petitions of the House were then framed and enacted at its own discretion by the crown in council. But these laws were sometimes not in accord with the spirit of the petitions and there were frequent protests from the commoners on that account. Eventually in 1414 the king agreed that from henceforth nothing be enacted to the petition of the Commons contrary to their asking. And soon thereafter the House of Commons adopted the plan of presenting its petitions in the form of bills all ready to be enacted. With this step came the need for a system of parliamentary procedure and presently there developed the practice of giving each measure three readings referring it to a committee and holding debates on it when differences of opinion arose.

THE COURSE  
OF LEGISLA-  
TIVE PROCEDURE

The procedure was very simple at first but year after year new complications were added by action of the House or developed by usage. All systems of legislative procedure tend to become more complicated as they grow older. The existing process of law making in the House of Commons is the outcome of a growth and development which covers nearly five hundred years and legislative procedure in all other countries is to a large extent modeled upon it. The manual which Thomas Jefferson prepared while he was serving as Vice President (and presiding over the United States Senate) was in all essentials based upon the English parliamentary procedure of his day. The American House of Representatives in 1837 adopted a provision which is still in force that Jefferson's manual should govern its pro-

ROMAN LEGIS-  
LATION

cedure in all matters not covered by its own rules. Thus it has come to pass that the rules of procedure in Congress owe their fundamentals to the older practice of the British House.

To the casual visitor sitting in the galleries the methods of law making at Westminster and at Washington seem to be wholly unlike. But the differences save in one important respect are superficial only. They do not affect the underlying principles which (with one exception) are the same in all English speaking legislative chambers. Measures are introduced on both sides of the Atlantic in much the same way: they are given three readings, referred to committees, reported out, debated, amended, and sent to the other chamber. The differences relate principally to the position and powers of the speaker, the organization and work of the committees, the limitations on debate, and the distinction between public and private bills.

This last named difference is the most important one. In parliament a distinction has long been made and is still made between public and private bills. In Congress there is no distinction except that the two classes of bills are placed on different calendars. According to British parliamentary practice a public bill is one which affects the general interest and ostensibly concerns the whole people or at any rate a large portion of them. A measure for changing the tax laws is a public bill, so is a bill for altering the suffrage or raising the age of compulsory school attendance or establishing a new administrative department. A private bill on the other hand is one which relates to the interest of some one locality or corporation, municipality, or other particular person or body of persons.

Thus a bill authorizing the construction of a new street railway or the extension of an old one, or permitting a city to borrow money for a municipal lighting plant, or empowering a corporation to do something not already authorized by its charter—anything of that sort is a private bill. There are some bills of course which come in the twilight zone between these two categories, but so many measures have been presented to parliament and ruled upon during its long history that the precedents now cover almost every conceivable case and the speaker merely follows these precedents in deciding when doubt arises, whether a bill belongs in the public or the private class.

## LAWMAKING IN PARLIAMENT

When public bills are brought in by a member of the ministry they are known as government measures. All money bills must be so introduced.<sup>1</sup> But public bills (other than those which relate to the raising and spending of money) may also be brought in by any private members that is by a member of the House who is not a member of the ministry. Such public bills are known as *private members' bills* and a word of caution should be added lest the reader drop into the pitfall of confusing these private members' bills with private bills. Government bills, money bills, and private members' bills are all *public bills*. In the process of legislation they are so dealt with. Private bills on the other hand are based on petitions from the parties directly interested and go through a special procedure. Any bill, whether public or private, may be introduced either in the House of Commons or the House of Lords, the only exception being that money bills must originate in the Commons. As a matter of practice, however, the great majority of all measures originate in that House.

GOVERNMENT  
BILLS AND  
PRIVATE  
MEMBERS  
BILLS

Most of the important measures laid before parliament are government bills, which means that much preliminary consideration is given to them by the cabinet. Important government bills are worked out in all their detail at Whitehall before being brought to Westminster. One of the ministers makes the first rough outline of a bill, stating only the main principles. This outline he lays before the cabinet for discussion. If the principles are agreed to, he then hands his outline to his own expert subordinates for elaboration into a finished measure, with sections, subsections, and paragraphs. Thereupon the cabinet gives it a final look over and the bill is ready to be introduced.

GOVERNMENT  
BILLS ARE  
PREPARED

The introduction of every bill, whether by the government or by a private member, is preceded by a notice. Then, when the time comes, the bill is handed to the clerk of the House, who reads its title aloud. In most cases the bill has not been put into finished form when the time for its introduction arrives. When that happens the clerk is given a

INTRODUCTION  
A FIRST  
READING

Any bill can be introduced unless a previous resolution of the House Committee of Ways and Means has been passed declaring the expediency of carrying out certain expenditures, of imposing certain taxes, or such resolution can be made except by minister of the crown. The same is true of every bill which though not a financial bill, involves in its passage a charge on the public funds.

dummy bill with nothing but the title written down. In any event the House without debate or discussion accepts this first reading and orders the bill to be printed thus placing it in line for a second reading. The measure must then wait its turn. If it is a government bill of great importance however the minister in charge of it usually gives the House a brief summary of its provisions when it is introduced.<sup>1</sup>

In due course the bill is again reached by the House and its sponsor moves that it be read a second time. This second reading

gives opportunity for a debate on the principles of the bill. Discussions of individual provisions are out of order and amendments which merely aim to alter the phraseology of the bill are not considered at this stage.

The question is whether the House desires legislation of the proposed type at all. If the opposition desires to test its strength with the ministry here is the opportunity to do it. It may move that the bill be given its second reading this day six months or (in the latter part of the session) this day three months which would put it over to a date when the House is not in session and hence is equivalent to an indefinite postponement. Or it may offer some resolution which is hostile to the general tenor of the bill. Long debates often mark this stage in the progress of important measures—debates which extend over several days. Such debates are usually followed by a vote (a division it is called in England) which determines whether the House approves or disapproves the principles of the bill. In the case of a government measure a defeat at this stage expresses a lack of confidence in the ministry and under normal conditions would compel it to resign. Only on the rarest occasions however has a government measure been refused a second reading.

Having passed its second reading the bill enters the committee stage. It is referred to a committee for the consideration of its details.

Ordinarily every public bill (except a money bill) goes to one of the standing committees but in exceptional cases the House may order it to a select committee.<sup>2</sup> If the measure be a money bill it goes to the Committee of the Whole House immediately after its second reading.

<sup>1</sup> It sometimes happens moreover that the minister in charge of an important bill will ask leave to introduce it. This provides him with an opportunity to make an extended speech on the measure and for a general debate to arise.

<sup>2</sup> The reference of a public bill to a select committee is usually for the purpose of examining some new principle which has been embodied in the bill.

THE SECOND  
READING AND  
REFERENCE TO  
COMMITTEES.

THE GOVERNMENT  
STAGE.

Moreover the House may at any time and for any reason order a non financial measure referred to the Committee of the Whole House but this is seldom done

The organization of these various committees has already been explained <sup>1</sup> Every measure sooner or later reaches the House from a standing committee a select committee or from the Committee of the Whole House Then it enters the *report stage* being laid before the House in amended and reprinted form Bills may come back from committees and be given their third reading forthwith but important measures rarely have any such good fortune It amendments have been made in committee these may be debated during the report stage and alternative amendments offered All the old questions which were threshed out at the second reading may be debated over again—and in the case of a controversial measure they usually are At the close of this debate the measure is ready for its third reading In connection with the third reading of a bill no amendments other than purely verbal ones are in order If it is desired to change the substance of a clause even slightly the bill must go back to committee The House must now accept or reject the bill as it stands Rejections at the third reading are not common Here ends the action of the Commons and the bill goes to the House of Lords for concurrence

THE REPORT  
STAGE.

THE THIRD  
READING

There all public bills are given their first two readings considered in Committee of the Whole referred to a standing committee reported back with or without amendments debated and then adopted or rejected Under the normal procedure no measure (except a money bill) can be passed unless every word of it has been approved by both Houses Under the terms of the Parliament Act (1911) a money bill becomes a law one month after its passage by the Commons even if the Lords withhold their concurrence On other measures if the two chambers fail to agree there are two alternatives An exchange of written messages may take place between committees representing the two Houses in the effort to effect a compromise and an agreement may be achieved in this way There is no provision for a joint committee of conference as in Congress Failing a compromise by written exchanges the House of Commons may decide to re-pass any public bill at three successive

PROCEDURE IN  
THE HOUSE OF  
LORDS

DISAGREEMENTS

sessions with an interval of at least two years between the first and final passage in which case it is sent forward for the assent of the crown notwithstanding the non concurrence of the Lords. This royal assent as has been pointed out is a mere formality.

British parliamentary procedure is based upon the theory that the initiative as respects all public measures belongs to the cabinet and that government measures ought to have the right of way. Hence although public bills may be introduced by private members they have relatively little chance of passage or even of prolonged discussion.

This is because most of the daily sittings of the House are reserved for government measures and only a few are available for the consideration of private members' bills. Even these sittings, moreover, are taken over by the ministry for government bills when

PRIVATE  
MEMBERS'  
BILLS

the pressure of business becomes heavy. Nevertheless private members sponsor a great many public bills and as there is no chance of considering them all

the rules of the House provide that a selection from the entire list shall be made by lot. At an appointed hour therefore those private members who desire to introduce public bills are required to put their cards in a box at the clerk's table and the clerk draws them out one by one. The member whose name is first drawn gets the opportunity to introduce his bill on the first available day of the session, the second member gets the next available day and so on till the opportunities are exhausted.

Having had the good fortune to get his bill on the Notice Paper in this way the private member moves that it be read a first time

THEY HAVE  
LITTLE  
CHANCE OF  
ENACTMENT

and secures it a second reading. It then goes to one of the standing committees and follows the same procedure as other public bills. If a member is lucky in this lottery and can introduce a bill which is generally

popular and which neither the ministers nor any of his fellow members dislike and if he possesses the art of appeasing opposition he may manage adroitly to steer his bill through a parliamentary session.<sup>1</sup> But few members can hope to run this gauntlet successfully and although scores of private members' bills are prepared on the eve of each session it is unusual for more than a half dozen of them to gain places on the statute book before parliament is prorogued or dissolved.

<sup>1</sup> C. F. G. Masterman, *How England is Governed* (New York, 1922) p. 243.

## PRIVATE BILLS

So much for public bills which are introduced by the ministry or by private members. All other bills are known as private bills. Most private bills are bills introduced by municipalities or corporations asking for special powers. English municipalities have a broad range of powers laid down by general law but from time to time they desire special powers in addition. These powers they seek in many instances by means of private bills. Every year parliament gives special powers to individual cities (boroughs) in this way. A highly advantageous arrangement this is deemed to be for it gives flexibility to the system of local government and enable parliament to give one municipality additional powers as an experiment without committing itself to the same policy for all.

PRIVATE BILL  
PROCEDURE

These private bills are presented to parliament in a different way and do not follow the same procedure as public bills. They are presented in the form of petitions with the bills attached. They cannot be introduced by merely giving notice on the order paper but must first go before two parliamentary officials (one from each House) known as the *Examiners of Petitions for Private Bills*. Every petition for a private bill must be preceded by certain published notices the object of which is to inform those whose private interests may be affected by the bill. Copies must also be sent in advance to the government departments concerned—to the ministry of health in the case of a private bill providing for the extension of a municipal sewerage system for example or to the ministry of transport in the case of a bill authorizing the taking of land for a street railway. If the Examiners find that there has been full compliance with the requirements they so certify and the bill may then be presented to either House.

THESE  
THREE  
MATTERS

On introduction all private bills are read a first time and ordered to be read a second time. After second reading if there is no opposition they are customarily referred to a committee on unopposed bills. If there is opposition a bill goes to one of the private bills committees. These are small committees of disinterested members who are appointed by the committee of selection from lists prepared by the party whips. Each committee on private bills consists of four members in the Commons. In the House of Lords each private bill

THREE  
COMMITTEES  
ON PRIVATE  
BILLS

committee has five members. The chairman has a casting vote and three members form a quorum. A private bills committee may be named to consider a single bill but more often every such committee gets a group of similar measures. Before going on a private bills committee however each member must sign a declaration that he has no personal interest, and that his constituents have no local interest, in the measures to be considered.

The private bills committees each in its own committee room, give hearings to all who have a definite interest in the bills, whether for or against. Every private bill begins with a preamble setting forth the object of the bill. The committee first hears evidence and arguments on the question whether the object is desirable. Then it decides that the preamble is proved or not proved. If the latter the bill drops if the former the committee proceeds with hearings on the clauses of the bill. These hearings are fair and impartial: they are conducted by paid counsel on both sides with testimony as in a court of law and arguments at the close. They differ from the legislative committee hearings with which Americans are familiar in that none but persons who have a *locus standi* in other words a demonstrable interest in the bill are permitted to give testimony before the committee.

The private bill committee in examining any bill has at its disposal a report from the ministry of health, the board of trade the ministry of transport or the other central department which is most immediately concerned. In this way it can make sure that the measure does not conflict with the general policy of the government or create an undesirable precedent. But it cannot be too strongly emphasized that the work of a private bills committee while legislative in form, is largely adjudicatory in fact: hence it is done in accordance with a procedure which is quasi-judicial. Party politics have no place in the consideration of private bills.

When a private bills committee has reached its decision it reports each measure favorably or unfavorably with or without amendments to the House which its members represent. The committee's report on the bill is almost invariably accepted although there is no question as to the right of either House to reject a report on a private bill if it chooses to do so. But the members know that the committee has been impartially constituted that it has given each side a fair hearing and that it

HEARINGS ON  
PRIVATE  
BILLS.

ADVICE FROM  
THE EXECU-  
TIVE DEPART-  
MENTS

THE ACTION  
OF THE  
HOUSE.



has consulted the experts. Occasionally however a private bill raises some issue of general policy reaching far beyond the question immediately covered and then the House may divide on the committee's report. But as a rule it accepts the committee's recommendation without discussion and thereafter the private bill takes the same course as a public bill.

This method of dealing with private bills has two outstanding merits. It ensures the careful non-partisan consideration of measures which from their nature ought not to be dealt with in a partisan spirit. It saves the time of both chambers. The procedure rests upon the common sense principle that the time and patience of several hundred legislators should not be consumed hour after hour in discussing whether the borough of Battersea should have a new cemetery or the Liverpool Corporation Tramways build two hundred yards of track outside the city limits. In Congress where general and special bills are dealt with in the same way there is a serious imposition upon the time and patience of the members. Measures which are in effect private bills come before it by the thousands. They are brought in by individual congressmen. One proposes a pension for somebody, another a harbor improvement somewhere, another an official favor for somebody else. All bills in Congress are supposed to be created free and equal, no matter how trivial their importance may be; they are all referred to some committee which may already have its calendar crowded with measures of nation-wide interest. The result is that most of the special bills obtain very little consideration and unless some influential members of Congress get behind them they are asphyxiated in committee. Most of them probably deserve this fate, but unhappily it is not always the meritorious ones that survive. The worthiness of a special bill in Congress has little to do with it getting a favorable committee report. The main thing is the amount of pressure that the congressman who fathered it can bring to bear.

On the other hand the English system of private bills procedure has the defect of being expensive. Witnesses must be brought to London, sometimes many of them. Fees are charged for the introduction of a private bill and again at various stages in its progress through parliament. It also becomes necessary when the bill is opposed to employ parliamentary agents who exact substantial remuneration. These

SERIES OF THE  
PLAN

DIFFERENCES OF  
THE BRITISH  
PRIVATE BILL  
PROCEDURE.

parliamentary agents are professional law promoters they are specialists in their work, and almost without exception they are lawyers of high standing<sup>1</sup> But any person may become a parliamentary agent by registering as such and filing a bond London has lots of them, and the best ones charge high fees for their services They are not lobbyists in the American sense their business is not to roam the corridors buttonholing members They merely supervise the drafting of a private bill see that the required notices are given present the evidence to the committees and make their arguments

The quest for private acts of parliament has been considerably slackened by the use of orders These orders are issued by a central department and become effective either automatically or when confirmed by parliament In the latter case they are known as provisional orders

The reason for the issuance of these orders is that many general laws which have been passed by parliament (such as the Public Health

Acts and the various acts relating to railways street railways public lighting poor relief and education) authorize the various government departments such

as the ministry of health the board of trade or the home office to grant certain powers whenever proper cause for such action can be shown When therefore a power not already conferred by law is desired by some municipality corporation or individual an application is made to whichever department has jurisdiction in the matter

For example an application for authority to finance a hospital

There are two grades of lawyers in England—solicitors and barristers The solicitor deals directly with the client the barrister (when one is employed) is retained by the solicitor to appear in court, except in the minor courts where the solicitor may himself appear In the case of private bills a solicitor prepares the case and may present it before the committee except in certain cases where the presentation of the case must be handled by a barrister

There are in all no fewer than six classes of orders viz

(1) orders made by a central department which become effective when made and do not require any reference to parliament (2) orders which become effective when made but have to be laid before parliament (3) orders which have to be laid before both Houses for forty days before they become effective during which time of course they may be objected to in the House (4) orders which do not become effective unless confirmed by resolution of both Houses (5) orders which may become effective unless some authorized authority objects, in which case they become provisional orders and finally (6) orders which are provisional in every case by which no objection and do not become effective until they have been embodied in a Provisional Orders Confirmation Act and passed by parliament

by the issue of municipal bonds goes to the ministry of health. The ministry through its administrative officers thereupon inquires into the merits of the application and if it decides that the permission ought to be granted an order is issued conferring the desired power. This order as has been said may be a provisional order in which case it requires for its validity the subsequent ratification of parliament. The usual practice is to lump several provisional orders into a confirmation bill and in that form they are presented for enactment into law. It is less expensive to obtain authority in this way than by introducing a private bill hence the practice of applying for orders has been increasingly popular in recent years.<sup>1</sup>

It has sometimes been suggested that Congress and the state legislatures as well might unburden themselves in this way from the great pressure now placed upon them. They might authorize the various executive departments (such as the department of commerce in the national government or the department of education or of public utilities in the state governments) to issue provisional orders which would have the force of law when confirmed by legislative enactments. But the American scheme of government by checks and balances does not lend itself readily to any such procedure. In Great Britain an executive department being assured that there is a legislative majority behind it can always count upon the confirmation of its acts. In the United States there would be no assurance of such confirmation. The majority in Congress or in a state legislature is sometimes hostile to the executive and even when the two branches of government represent the same political party they do not always work in cooperation. Certainty of confirmation (save in very exceptional instances) is the feature which makes the English plan workable and no such certainty could be hoped for in America. To some extent in recent years however American legislatures have been giving to various administrative authorities and boards the right to issue orders having virtually the force of law—without the necessity of confirmation. The order issuing powers given to the interstate commerce commission and to public utilities commissions in the various states are good examples.

With this general explanation of the various steps through which

<sup>1</sup> In addition to the foregoing orders there are also a number of orders which are issued by the various departments of the government. These orders are of two kinds: (1) orders which are issued by the various departments of the government in the exercise of their administrative functions; (2) orders which are issued by the various departments of the government in the exercise of their legislative functions. The first kind of orders are of two kinds: (1) orders which are issued by the various departments of the government in the exercise of their administrative functions; (2) orders which are issued by the various departments of the government in the exercise of their legislative functions. The second kind of orders are of two kinds: (1) orders which are issued by the various departments of the government in the exercise of their administrative functions; (2) orders which are issued by the various departments of the government in the exercise of their legislative functions.

a bill passes on its way through the House of Commons—five steps

BRITISH AND  
AMERICAN  
PROCEDURE  
COMPARED

in all <sup>1</sup>—it is now possible to compare the essential features of English and American legislative procedure. Fundamentally they are alike although there are some differences between the two. In Congress as has

been said there is no broad distinction among bills. All of them are public bills introduced by private members. It is true of course that

1 THE AB  
SENCE OF PRO-  
VISION FOR  
FORMAL EX  
ECUTIVE  
LEADERSHIP  
IN A COUNTRY

some measures are inspired by the President or by members of his cabinet. Many notable illustrations of this have been afforded during President Franklin Roosevelt's administration—for example, the National Recovery Act, the Agricultural Adjustment Act, the Social Security Act and so on. But measures

are never formally laid before Congress by a member of the President's cabinet or in the name of his administration. To introduce a measure in this way would be quite out of keeping with the traditions of Congress and would be resented by the members. It is not so in the House of Commons for there the members of the majority party are faced with the simple fact that a vote against any government measure is a vote to turn their own ministers out of power and put their opponents in. This makes them far more amenable to the crack of the party whip. The American congressman when he votes against some measure which the administration is known to support realizes full well that nothing catastrophic will happen. His party will not go out of power if it is in power it will continue in office to the end of its prescribed term even though it were turned down by the House of Representatives on one measure after another. The defeat of the Supreme Court reorganization measure by Congress if it had taken place in parliament would have turned the existing government out of office.

Any member in either chamber of Congress may introduce any bill save that money bills must originate in the House of Representatives. But measures of comprehensive scope and great

2 INTRO-  
DUCTION OF  
PUBLIC  
MEASURES

importance including those which correspond to government measures in Great Britain are usually laid before Congress by the chairman of the committee to

which such bills would naturally be referred and hence become

<sup>1</sup> To wit introduction and first reading, second reading, committee consideration, report stage and third reading.

Some of these were later held to be unconstitutional.

designated by the chairman's name. That is why we speak of the Sherman Law, the Mann Act, the Rogers Act, the Harrison Law, the Cable Act, the Bankhead Cotton Act, the Wagner Labor Act, and so forth. A measure for the further regulation of the railroads would ordinarily be brought in by the chairman of the committee on interstate commerce, while a proposal to provide federal subsidies for elementary education would be introduced by the chairman of the committee on education. In a limited sense, therefore, the chairmen of committees in Congress assume the functions of initiative and guidance, which members of the ministry are accustomed to exercise in parliament. Although they are not heads of administrative departments, they are usually in close touch with the departments concerned, and are provided with all the data they may require. Expert draftsmen are also used by Congress in the preparation of measures, although not to the same extent as in England.

In Congress again all bills are referred to committees before there is any discussion of their principles or general merits. In one respect this is an advantage, in another a defect. It gives the committees more freedom in overhauling a bill and changing its substance. On the other hand, it means that a committee must do its work without having first ascertained the attitude of the House toward the measure as a whole. Hence it sometimes happens that congressional committeemen will spend several weeks in perfecting the details of a bill, which is then rejected by the whole House on its general lack of merits. The excellence of the work done by the English parliamentary committees is due in part at least to a feeling of reasonable certainty that their labor will not be in vain. For they work on no public bill until after the House has accepted it in principle.

The chairmen of committees in the House of Commons, on the other hand, do not obtain the prominence or the publicity that is given to the chairmen of important committees at Washington. They do not figure so prominently in the debates. On the floor of the House they are quite overshadowed by the ministers, who take personal charge of all government measures. Their names are not tacked to bills and displayed in the newspaper headlines. There is still another difference: the chairman of a parliamentary committee (like the speaker of the House) is deemed to be impartial. He presides and maintains decorum in his committee room, but he

3. A DIFFER  
ENCE IN CO  
MITTEE WORK.

CHIEF RE-  
PRESENTATIVES IN THE  
TWO COUN-  
TRIES COM-  
pared

does not take sides. The chairman of a congressional committee has no such inhibition. He is a power in his committee and often dominates it. He has no hesitation in working openly in behalf of a measure which his committee is considering or in working openly against it. Finally there is a lively competition for places on the more important committees at Washington. at Westminster there is very little.

The use of the question hour in the House of Commons points out still another important procedural difference. When a congress-

5 THE SYS-  
TEM OF  
QUESTIONING  
THE MINIS-  
TERS

man desires information from one of the executive departments in Washington he telephones or writes for it and if he does not obtain it in that way he may offer a resolution requesting that it be brought in. But he is not allowed to consume the time of the whole House

in pelting questions at the administration. The administration in Washington cannot be questioned on the floor for nobody officially represents it there. Some chairman of a committee or some other congressman may constitute himself a spokesman for the President and may rise in his defense when an attack is made but he does so in an unofficial capacity. In parliament as has been pointed out, there is a regular time for asking questions and for answering them from the floor.

There are two practices in the American House of Representatives which the House of Commons has thus far avoided. One is

6 YIELDING  
THE FLOOR.

the custom of requesting a member to yield the floor when he is in the middle of his speech. This is done at almost every sitting in Washington and although the

member who has the floor may decline to yield it he usually complies as a matter of courtesy. In this way the debate is sometimes turned into a personal fracas. This custom of yielding the floor is unknown in the House of Commons. In that body when a member is on his feet he may be interrupted at times by cries of *Hear hear* or *No no* from the opposing benches but other members do not cut in upon him until he is through. The continuity of the debate is in this way preserved.

Then there is the leave to print arrangement. It has no place among the usages of parliament. The only way in which a member

7 GRANTING  
LEAVE TO  
PRINT

of the House of Commons can have a speech printed at the public expense is to deliver it. But in Congress

many undelivered speeches are printed session after session. A congressman speaks for five or ten minutes and then

moves that he be given leave to extend his remarks in print. No body objects as a rule for as a choice of evils it is preferable to let him print his speech rather than have to listen to it. In some cases a congressman obtains leave to print in the *Congressional Record* a speech no portion of which has been delivered at all. And sometimes the printed text of the undelivered speech is liberally interspersed with Applause Laughter etc. Copies are then struck off by the thousand and franked through the mails to voters in the congressman's district—to show them what an accomplished orator their representative is. The English voter has been spared this infiction.

Much has been written about the concentration of party responsibility in England and the fidelity with which party pledges are redeemed. A British political party when it makes a promise to the people is enabled by the organization and procedure of parliament to fulfill this promise. If it triumphs at the polls it controls both the executive and legislative branches of government. The cabinet then proceeds to crystallize the party's promises into government measures with the assurance that they will be enacted into law. But in America the organization and procedure of the government does not so readily lend itself to the redemption of party pledges. Candidates for the presidency make all sorts of promises express and implied during the election campaign. But without the cooperation of Congress there is no way in which these promises can be carried out. Senators and representatives also make pledges but unless the administration is ready to help in fulfilling them they go mostly unredeemed. The same is true in state government.

PARTY RESPONSIBILITY  
AS A FEATURE  
OF THE  
GOVERNMENT

Party programs are therefore a much less accurate forecast of future legislation in America than in England. Party pledges are more frequently disregarded here than there. English parliamentary procedure is based upon the principle that the dominant political party through its majority in the House of Commons and under the leadership of the ministry is definitely responsible for the fulfillment of its program. No checks and balances stand in its way. It cannot avoid or evade it does not make excuses or blame the minority. That is the theory of lawmaking in England and the practice of it also.

THE  
DIFFERENCE  
IN  
PROMISES

But this system of lawmaking has the defects of its qualities. It is hard on the private member especially on the back bencher.

who is not prominent in the councils of his party. His power to initiate legislation although supposed to be unlimited except as respects money bills is in reality very small. It amounts to much less than that of the individual congressman. He can bring in a private member's bill but his chances of getting it considered much less of having it passed are exceedingly slim. The standing orders the traditions of the House even the theory of ministerial responsibility are all against him. True enough he may suggest amendments to government measures when they are in the committee stage and a minister who desires to get his measures through will always do what he can to conciliate the back benches. Occasionally a private member by reason of his special knowledge concerning the matter in hand may become an influential factor on the floor but such cases are exceptional.

In a word the cabinet is responsible for initiating virtually all important measures and for steering them safely through both chambers. At every session it presents a sizable list of bills and these have the right of way. There is very little time for anything else. If individual members get in the way the cabinet rolls over them with its loyal majority. It is one of the agreeable fictions of British government that the Commons controls the cabinet but an assertion that the cabinet controls the Commons would come closer to the actualities. The cabinet with a majority behind it according to Ramsay Muir is a dictatorship qualified by publicity.<sup>1</sup> This is perhaps too strong a statement but in the process of lawmaking the power of the cabinet is very great.

Both the House of Commons and the House of Representatives have devised ways of bringing a debate to a close and preventing obstruction by the minority. More than eighty years ago the House of Representatives adopted a rule that no congressman might speak for longer than one hour except by unanimous consent and about the same time it was agreed to amend the rule relating to the previous question so that it might be used more effectively in shutting off debate. A motion that the previous question be now put may be made by any congressman

<sup>1</sup> *How Britain is Governed* (3rd edition London 1935) p. 89.

<sup>2</sup> The previous question rule in its original form was first adopted by the House of Commons in 1604. It was put into the first set of rules adopted by the House of Representatives in 1789.



and if the motion prevails with a quorum present the vote on the main question must be taken at once. A motion that any matter be laid on the table is also in order and with a few restrictions may be offered at any time. It must be voted on without debate and when carried it table not only the amendment under discussion but all other amendments and the main question as well.<sup>1</sup> A more common and less drastic method of shutting off discussion in the House of Representatives is by an advance agreement as to the time at which the debate shall be brought to a close. The committee on rules after consulting the leaders on both sides recommends a time limit and the House accepts it. Then when the time limit is reached the speaker brings down his gavel and the vote is taken.

Nearly all great legislative bodies sooner or later find it necessary to devise some means of defence against willful obstruction by filibustering minorities. More than three hundred years ago the House of Commons adopted a rule whereby a member might move that the main ques-

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tion be now put and this arrangement served well enough until the latter part of the nineteenth century. Then during the early eighties it did not prove strong enough to prevent the deliberate obstruction which marked the debates on Irish questions. On one occasion (1881) the House was held in continuous session for forty one hours while the Irish Nationalists filibustered to prevent the introduction of a coercion bill. These tactics led to the ultimate adoption of the closure as it is called. Under this arrangement a member may move the previous ques-

THE CLOSURE

tion at any time even when another member is speaking. Unless the speaker decides that the taking of an immediate vote would be unfair to the minority the motion must be put to a vote at once without further amendment or debate. But even this did not put an end to obstruction here the clauses of a long bill were being taken up one by one in Committee of the Whole House. The previous question had to be invoked on every clause. So the House of Commons devised another weapon for handling obstruction.

This is the process known as closure by compartments—which is the application of the previous question to a whole group of clauses in a bill. Somebody moves for example that clauses seventeen to thirty three stand part of the bill. Then if the speaker approves and a majority agrees

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CO A  
SENT

<sup>1</sup> Robert L. Co. *Leg. & Proc. Law* (Boston 19 ) p. 6

the debate on these clauses is at an end. A variation of this is known as the kangaroo closure, an arrangement which permits the speaker and the chairman of the Committee of the Whole House in Ways and Means to select amendments for discussion out of those which appear on the order paper and to pass over the rest. The chairman of a standing committee does not have this power. In the hands of an impartial speaker or chairman this is a valuable arrangement for expediting business.

By majority vote the House of Commons may also fix a time limit for the consideration of the various clauses of a bill. Then the guillotine falls at the expiration of the allotted period whether all the clauses have been discussed or not.

THE TIME  
TABLE

But the guillotine is not frequently used. The practice now is to make a time table whenever an important controversial measure comes up. The minister in charge of the bill then asks the House to approve a resolution allotting so many days to the second reading, to the committee stage, to the report stage, and so on. The time table may even assign specified hours to individual clauses.

It will be noted therefore that although the nomenclature is different the methods of expediting measures actually employed by these two great English speaking legislatures are essentially alike.

CONCLUSION

The closure in all its forms is a crude and arbitrary process which ought not to be used except as a last resort. Far better it is as both Houses have learned to agree in advance on an apportionment of time which will give both supporters and opponents a fair opportunity to be heard, which will ensure consideration of the important clauses in a bill, but which will none the less prevent undue delays or obstructionist tactics. Rules of procedure in legislative bodies exist for two purposes—first to guard against hasty and ill-considered lawmaking, second to expedite business. The difficult problem is to find rules that will achieve both these ends simultaneously.

The use of time limits and time tables has had one noticeable result at Washington and Westminster alike. It has brought the golden age of legislative oratory to an end. The days of Pitt and Fox, and Webster and Clay seem gone forever.

THE DECLINE  
OF ORATORY

When only a few hours are available for the discussion of a bill, no member can monopolize the whole time for a set oration such as these old time thunderers delivered in their day. The debater who desires to avoid unpopularity with his fellow mem-

bers several of whom are sitting on tenterhooks awaiting their turn must make his deliverance short and snappy. Hence it is said that while the seventeenth-century members quoted passages from the scriptures and those of the next two centuries regaled the House with excerpts from the Greek and Latin classics the twentieth-century M.P. quotes from nothing at all and is quick about it. In Congress they give a prosy member leave to print in the House of Commons they pursue the less expensive plan of flocking out of the chamber and leaving him to cast his pearls of rhetoric at the empty benches. Incidentally it is an unwritten rule of the Commons that a member may not read his speech from manuscript although the use of notes is permitted.

This is not to imply however that time limits and time tables are alone responsible for the decline of parliamentary and congressional oratory. The decline had begun before these limitations came in. Long orations are not in accord with the spirit of the age in which we live. A speech of three or four hours' duration would clear the floor in the legislative halls of any country today. And the tension upon a speechmaker who has to hold the attention of restless members for a prolonged discourse has also become far greater than it used to be. The longest speech in the House of Commons since the incoming of the twentieth century was Lloyd George's famous budget speech of 1909. It took him less than three hours to deliver but he became exhausted before the end and the House accorded him the courtesy of adjournment for a short period in order that he might regain strength to finish it.

DE TO OTHER  
FACTORS THAT  
THE LIMITS

The whole tempo of life has been speeded up nowadays. People travel faster talk faster and think faster than they used to do. They are more impatient of things that take time. Time was when Edward Gibbon could write five volumes on the *Decline and Fall of the Roman Empire* and get millions to read them but the Roman empire would have to decline and fall in five pages nowadays in order to secure any such quota of readers. The age in which we live seems to be resentful of anything that does not come in concentrated form. So it insists that speechmakers provide themselves with terminal facilities.

In tones of regret some people talk of the decline of oratory on both sides of the Atlantic. They tell us that eloquence has been laid to rest in the churchyards. But it may well be doubted whether there

is much reason to mourn its demise. Emerson once remarked that the curse of this country is eloquent men. If legislators perorate less nowadays it may be that they put more substance into their speeches. If there is less eloquence there may be more wisdom; certainly there is more meaning to what the orators say. Many of the so-called classic orations embodied an astonishing paucity of ideas. They were a series of purple patches of meaningless periods delivered with pontifical solemnity. Take down a volume of Gladstone's speeches or of Daniel Webster's. You will wonder how such utterances could ever have stirred the souls of men. Both *Hansard* and the *Congressional Record* make dull reading nowadays and very few people ever wade through their prosy pages but they are as light literature compared to the volumes of great orations which cumber our library shelves. The world has grown tired of oral grandiloquence. *Pectus est quod desertos facit*—as Quintilian says. It is the heart that makes men eloquent.

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An excellent concise sketch of the process of lawmaking in parliament may be found in Federico A. Ogg, *English Government and Politics* (2nd edition New York 1936) chap. xvii.

The standard work on English parliamentary procedure is Sir Thomas Erskine May, *Parliamentary Practice*, a book which is now in its thirteenth edition (London 1924). The *Standing Orders of the House of Commons* are included. Special mention should also be made of Josef Redlich's monumental study of the *Procedure of the House of Commons* (3 vols. London 1903). Briefer outlines are Sir Courtney Ilbert, *Parliament: Its History, Constitution and Practice* (London 1911) the same author's *Mechanics of Legislation* and his smaller *Manual of Procedure in the Public Business of the House of Commons* (London 1908). A later book of much value is G. F. M. Campion, *An Introduction to the Procedure of the House of Commons* (London 1929). Carl W. Ullrich, *The History of English Parliamentary Privilege* (Columbus, Ohio 1911) deals with an interesting phase of a somewhat related subject.

For analogies and contrasts reference may be made to D. S. Alexander, *History and Procedure of the House of Representatives* (Boston 1916) and Robert Luce, *Legislative Procedure* (Boston 1922). In a smaller book entitled *Committees: an Experiment* (Cambridge 1926) the same author deals with the committee system in Congress.

## CHAPTER XIII

### ODD WAYS AT WESTMINSTER

The House of Commons needs to be impressive and impressive it is. The way to preserve old customs is to enjoy them — *Walter B. P. H. I.*

The House of Commons is not only an impressive body but picturesque also which is because it retains so many ancient customs and curiosities of procedure. Most of these go back several centuries their exact origin is sometimes so much in doubt that even the most diligent antiquarians have been unable to explain how they first came into existence. A few of them are clearly the heritage of mediaeval days when the House was made up of burgesses and knights of the shire. The political Philistines look upon some of these old customs as bric a brac which ought to be thrown away and replaced by things more up to date. But the evidences of age (which old customs are) give dignity and draw reverence. It is not surprising that the House of Commons as the oldest representative chamber on earth maintains an atmosphere more redolent of bygone centuries than that which surrounds the making of laws in any other country. Its glamor is not merely a barbaric pomp as Richard Cobden once called it.

The oddest thing about the House of Commons is its meeting place. This chamber is unique. Legislative halls in all other countries are so planned that every member can have a seat and can sit with his face to the presiding officer. But in the House of Commons there are benches for less than two thirds of the members. And those who occupy them do not face the speaker of the House they face their opponents. New members sometimes do not realize that no individual seats are assigned and there are current stories of freshman commoners making early application to the clerk in the hope of getting well placed. A first glance around the chamber gives the impression of a chapel or huge choir stall. The subdued light which falls from overhead throws a mellowness over the place. There is an air of dignity

leisure and comfort intermingled with venerableness—all in sharp contrast with the bustling auditorium where the American House of Representatives semicircles around its speaker

On the morning of the day when a new parliament assembles a quaint ceremony is gone through. In the early hours of this opening day a detachment of twelve yeomen of the guard  
SEARCHING  
THE HOUSE from the Tower of London marches to Westminster

These yeomen are colloquially known as *beefeaters* which is said to be a corruption of the French *buffetier*. They come in the picturesque glory of their Tudor regalia each carrying a lighted lantern of the pattern of 1600. Accompanied by the lord great chamberlain who is the custodian of the place they trudge through the legislative chambers and down into the rooms and corridors below into every corner of the stately pile. In and out among the coal bins and furnaces the gas pipes and the steam pipes the wine cellars and the rubbish rooms they go—every yeoman keeping step his eyes to the front. With their eyes to the front they are looking for kegs of gunpowder placed in some out of the way corner by the enemies of the king!

This ceremony of searching the Houses has been gone through at the opening of every new parliament for more than three hundred years. Back in the days of James I. a certain Guy Fawkes a young Englishman who had served in the Spanish army was hired by some conspirators to blow up the old House of Parliament. Fawkes succeeded in placing twenty kegs of gunpowder in the basement of the building all carefully covered with kindling wood. When parliament assembled with the king in attendance the gunpowder was to be touched off. But too many people were let into the secret somebody told the authorities and Fawkes was seized in the cellar (with the key in his pocket) on the morning of explosion day (November 5, 1605).<sup>1</sup>

Some time later it was ordained as a precaution against the

For more than two centuries after 1605 every fifth of November was celebrated as a public holiday in England a day frequently known as Guy Fawkes Day. Every year it is an occasion of some festivity. There is a well known duty

Remember remember the fifth of November

The gunpowder treason and plot

For I know n good reason why the gunpowder treason

Should ever be forgot.

As for the key which was found on Fawkes it is still on exhibition at Westminster

machination of any future Fawke that the whole place should be searched at intervals and to this day the quaint formality continues. Parliament has built itself a new abode since 1605 and there are now no unhilted cavern underneath. But the yeomen of the guard continue to make their round. Every inch of the building is now brilliantly lighted by electricity but the beefeaters still carry their flickering lanterns. When they have searched through the miles of rooms and corridors they send a report to the royal palace that All's well and are then rewarded as of yore with a repast of cakes and ale ending with a toast to the king.

The House opens its daily sitting with the entrance of the speaker's procession. That dignitary marches down the great aisle accompanied by the chaplain in surplice and stole the serjeant at arms with his sword and the mace bearer with the mace. Then comes the reading of a psalm and a prayer by the chaplain. It is always the 67th Psalm. Oh let the nations be glad and sing for joy for Thou shalt judge the people righteously and govern the nations upon earth. Then shall the earth yield her increase and God even our own God shall bless us.

As a rule there are very few members in the chamber when these prayers are being read and visitors are not allowed in the galleries until after the chaplain has finished. This rule no doubt was born in the days when religious bitterness was rife—when the reading of prayer from a prayer book might have been made the occasion of disorders on the part of Nonconformists. Members of the House face the center aisle during the reading of the psalm and then turn their faces to the wall when the prayer is being read. The origin of this curious custom nobody seems to know. During prayers by the way the Treasury bench is always empty. It is not that members of the cabinet have less need for the chaplain's intercession than the rank and file of the Commons but merely that they do not need to come early in order to reserve their seats.

Prayers being over the doorkeeper shouts Mr Speaker at the Chair. The cry is taken up through the lobbies and corridors thus warning the later members that the day's sitting has begun. The mace is in full view on the

It has been suggested that the excellent wherry in the usages of the House that the old members probably know their benches during prayers and that perhaps it is unnecessary to have the chaplain say have one's seat this way.

table just below the speaker. This indicates that the House is sitting, as a House, not in Committee of the Whole House. When the House goes into committee the sergeant at arms takes the mace reverently from the table and sets it underneath, out of sight. When the House adjourns it is carried off with the outgoing speaker's procession. This mace, which figures so prominently in House procedure is a wooden staff about five feet long, finely embellished in gold leaf and surmounted by a gilded crown.

The use of the mace goes back to early mediæval days when the king attended parliament in person. Originally, as we have seen, it was his custom to be present at meetings of his Great Council, and later at meetings of the *parliamentum*. When parliament divided into two Houses

ITS HISTORY  
IN ENGLAND

the king attended sessions of the House of Lords only. If he had anything to say to the House of Commons he summoned the commons to the House of Lords, as he still does at the opening of a new parliament. Then he instructed them to go to their own chamber and deliberate upon the matters which were within their province, especially the granting of money. But not having the royal presence with them in their own chamber, the commons appear to have desired some symbol of it, some token of the fact that they were meeting by virtue of the royal command and under the king's protection. So this mechanical contrivance was devised at an uncertain date, a wooden staff with a crown on its head, and it became known as the mace. No business is in order until the mace has been placed on the table where it silently reposes till the House goes into Committee of the Whole or adjourns.

There it has lain for at least five hundred years. Were it able to write an autobiography it could tell a long and chequered tale.

A CROW  
WILLIAM FITZ  
SO E

*Quare pars fa*—it might say, for on one occasion the mace, as itself expelled from the House. Thus was it 63 years O. a Crow will be everasperated at the action of parliament in trying to prolong its own existence. With a squad of soldiers he hurried to Westminster and ordered the members out of doors. Then his eye caught sight of the mace on the table. 'Take away that bauble!' he bellowed, and the mace disappeared. But it was soon brought back again.

Perhaps it may be of interest to mention that the colonial assemblies of America, following the custom of the House of Commons, each provided itself with a mace, and the usage is still continued.



both by Congress and the state legislatures. In the American House of Representatives the mace is a plain staff surmounted by the figure of an eagle. It is not laid on the clerk's table but stands on a marble pedestal at the right hand of the speaker. When the House goes into Committee of the Whole it is removed from this pedestal out of view. When the House adjourns it is taken away by the sergeant at arms. The mace in the House of Representatives is said to be the symbol of authority but how many congressmen know how and why this symbolism originated?

THE MACE  
IN CONGRESS

The table which is used by the clerks in the House of Commons and on which the mace reposes is a massive piece of furniture occupying most of the space between the Treasury and Opposition benches. These two benches as has been said face each other from opposite sides of the main aisle one at the speaker's right and the other at his left. On the table are piles of books and documents which the ministers and their opponents utilize in the course of their speeches. On it also are two brass bound boxes one at either side. It is the practice of those who sit on the Treasury or Opposition benches to use these boxes as their pulpits. They often set their notes thereon and thump their fists on the oak receptacles to emphasize the salient points in their utterances. Mr Gladstone in the course of his long career as prime minister and as leader of the opposition punished both of the boxes so severely that the dents made by his signet ring are there to this day bearing tribute to the vigor with which the great commoner drove home his arguments.

THE TABLE

The Treasury bench on the speaker's right is occupied exclusively by those members of the ministry who are members of the House. If the number present exceeds the capacity of the bench the senior ministers occupy it and the junior ministers find seats elsewhere on the government side of the main aisle. But so long as a member of the Treasury bench the occupant of any ministerial post however subordinate has the right to a place on it provided of course that he is a member of the House of Commons which some ministers are not. By an old parliamentary custom moreover the two members for the

THE TREASURY  
BENCH

That some of them are members of the House of Lords. Ministers are not permitted to sit on the floor or speak in the chamber to which they do not belong. See Chapter XXIV.

City of London are entitled to sit on this bench but they never do it (unless they happen to be ministers) except on the first day of a new parliament. On that day they invariably sit there a few moments for the purpose of asserting their ancient right to do so—and this even though they happen to be members of the opposition.

The Opposition bench is of equal capacity but usage does not precisely define who shall occupy it. In general however this

bench is reserved for the leading members of the THE OPPOSITION BENCH. opposition—which is a rather elastic limitation.

As a matter of practice the leader of the opposition virtually determines who shall sit alongside him on this bench for no one would venture to go there uninvited. Some of his chief lieutenants are always on hand others go to the Opposition bench when their presence is desired for consultation during a particular debate. Younger members of course deem it an honor to receive such an invitation.

Apart from the honor involved there is a certain advantage in sitting on one of these benches and in addressing the House from the head of the aisle. For one thing it is the only place where a speaker has something to lean upon. And rather curiously there is no other place in the House of Commons where a member can stand and speak face to face with most of his fellow members. Even at these front benches his back will be turned to some of his audience. Of course if he should go to the top back bench on either side he would then have the entire membership of the House in sight but half the members would have their backs turned to him. Fortunately the acoustic properties of the House are so good that a speaker can easily be heard no matter where he stands.

On the same level as the floor of the House and to the right of the speaker's chair there is a small gallery or enclosure. It is

reverently known as the official pew. Here sit THE OFFICIAL PEW. various permanent officials (not members of the

House) who may be wanted by ministers during the debate. When some troublesome point is raised by an opposition speaker the minister steps over to this enclosure and secures material for his reply. It is this practice that has given weight to the cynical assertion that the ministers are merely the spokesmen of their professional subordinates and that the House of Commons is merely a hall of echoes for the sayings of clerks and secretaries.

Some eccentricities of procedure are associated with hats in the

House Visitors to the Commons are often surprised to see members sitting with their hats on. The practice of wearing hats in the House of Commons is said to be a survival from the days when baron and knights came to parliament in full armor with helmets of steel that could not be removed. In all probability however the custom of hat wearing had a less chivalrous origin for members of the House of Lords do not habitually wear their hats during debates although they are even more directly the descendants of the mediaeval ironclads. The reason why the commoners wear their hats while the lords do not is probably because the House of Commons has never been provided with a convenient coatroom.<sup>1</sup> At any rate the earliest engravings of parliament show the members wearing caps and gowns then in the seventeenth century they appear without the caps but with flowing capes and swords in the eighteenth century they wore elaborate wigs for headgear and it was not until the nineteenth that the hats appeared.

THE HAT IN  
THE HOUSE

But hat wearing in the House of Commons is quietly on the wane. The practice is now confined for the most part to the relatively few members who wear silk hats (or toppers as Englishmen call them) and this glossy headgear is rapidly going out of use. On the other hand the custom of wearing hats in the House of Lords seems to be more common today than it used to be. Sir Henry Lucy not many years ago spoke of it as quite exceptional but at the present time the visitor to the galleries will see as many hats on the heads of lords as on those of commoners.<sup>2</sup>

AN OLD CUSTOM  
TO  
H  
AN

The etiquette which governs the hat in the House of Commons is well established and rigidly enforced. A member may wear his hat until he rises to speak or until he moves from one seat to another. Then he must uncover. (This rule has been waived for women members.) Even if he leans forward to whisper in the ear of the member in front of him he must remove his hat. The lifting of the hat is also used as

INDICATE  
A D T  
QUETTE

The present room of the Commons is located in the building formerly the chamberlain's hall. It is not used by the lords in the hall but only by the lords in the robes of arms. The robes of arms are the robes of arms of the lords.

See the preface to the A.F.P. ed. of *The Evolution of Parliament* (rev. ed. 1966).

Sir Henry Lucy *Lords and Commons* p. 93

a signal to the presiding officer. It is in this way, for example, that the minister or member who is in charge of a bill moves its advancement to the next stage. When the debate seems to have died down, the speaker looks toward the minister who is in charge of the measure. The latter does not rise or speak a word; he merely lifts his hat, and the speaker puts the question. The speaker also carries a three-cornered contrivance which is called a hat. He brings it with him into the House, sets it on the arm of his chair, and picks it up when he leaves. It is manifestly part of his official uniform, but it never goes on his head.<sup>1</sup>

It is an unwritten rule of the House that a member (other than one who sits on the front benches) may reserve any unoccupied seat by placing his hat on it. If therefore a private member goes out to the lobby, the library, the smoking room, the restaurant, or the terrace, he merely drops his hat on the bench where he has been sitting and departs with the assurance that he will find the place unoccupied when he returns. Due to the relatively small attendance when routine business is under consideration, there is not much occasion for members to reserve seats in this way, but on the opening day of a new session or when an important debate is scheduled, the quest for seats becomes lively. So a good many members (especially new members) go to the chamber some hours before the sitting begins and reserve seats for themselves by depositing their head gear in favorable locations. Those who do not take this precaution may have to find seats in the lower gallery (which is reserved as an overflow place for members) or may even have to stand during the proceedings.

This method of reserving seats has had its humors. Some years ago, when the Irish Nationalists were in the House, one of their number conceived the idea of reserving enough seats for the entire membership of his party, nearly a hundred in all. So in the gray dawn of the day on which a new parliament opened, he came to the House with a huge armful of hats and caps of varying sizes, shapes, and ages. One by one he deposited them at suitable intervals on the benches of the chamber, and when the House assembled he passed the word to his fellow Nationalists that all the good seats were

<sup>1</sup> The Lord Chancellor, who presides in the House of Lords, has a similar hat, but he wears it on his wig on certain formal occasions.

theirs for the taking. But the Tory members did not appreciate the humor of this proceeding. They protested against such trifling with an ancient tradition. Whereupon the House ordered an investigation of the whole question of reserving seats, and it was finally agreed that for the future a seat should be reservable only by the use of a member's own hat, and not by using what is termed in theatrical parlance a property hat. Under the new regulations moreover a member may now reserve a seat by leaving his card on it.

The usage of the House is friendly to hats but unfriendly to swords. No member (with one exception) may bring into the House a sword or anything that looks like a sword, not even a drawing-room rapier such as the serjeant at arms girds to his belt. This prohibition recalls the days when the gentlemen of England wore swords that were sharp. During a heated debate it was not uncommon for a quick-tempered knight to reach a hand to his sword-hilt.<sup>1</sup> His opponent across the aisle would sometimes meet the threat by doing likewise. There are several recorded instances of members drawing sabers and starting for each other, while friends on both sides intervened to avert a duel. So the House, in one of its irritable moments decreed that a line be drawn, a thin red line on the matting of the center aisle about twenty-four inches from the lower benches on either side. Then it ordered that no member in addressing the House should step over this line.

THE WEARING  
OF SWORDS

This diminished the danger of jousts in the chamber, but members might still settle their differences by a duel in the lobby, so the House eventually forbade the wearing of swords altogether. So strict is the prohibition that when distinguished military or naval officers come to the Houses of Parliament they must unbuckle their capons and leave them with the doorkeepers. The only exception to the rule is made in the case of the two members who move and second the address in reply to the speech from the throne. In accordance with a custom that goes back to time immemorial the two members may appear in court uniform with sword and scabbards, but only for the day upon which the moving and seconding is done. And the knightly para-

ACCORDING  
TO THE RULE

<sup>1</sup> This custom was in force in the House until early in the last century.

The serjeant at arms wears a sword of course, but it is not a member of the House and his hair is technically styled in the chamber.

phernalia even on this one occasion sometimes becomes an embarrassing adjunct to their carefully prepared speeches by getting entangled with shaky legs at critical moments<sup>1</sup>

Just inside the swing-doors which guard the main entrance to the chamber is a sliding brass rail which can be used to close the center aisle. This is the bar of the House which

THE BAR OF  
THE HOUSE

figures so frequently in the annals of parliament.

When the House orders anyone before it he is escorted to this bar by the sergeant at arms or his deputy and on many occasions some hapless offender against the dignity or privileges of the House has been haled there for judgment. In former days the

PRISONERS  
AT THE BAR.

prisoner at the bar was compelled to kneel while the speaker solemnly pronounced the censure of the House or even sentenced him to imprisonment.

But in 1772 the custom of requiring prisoners to kneel was discontinued by an order which provided that future offenders should receive the speaker's judgment standing. Imprisonment has not been meted out by Mr Speaker to anyone member or non member for many years. The last occasion was in 1880 when Charles Bradlaugh an atheist member elect raised a ruction because he was not permitted to take the oath of allegiance in his own way. In the Clock Tower there are still some detention rooms for the confinement of those whom the speaker penalizes.

But it is not offenders alone who come to the bar of the House. Men of all ranks and reputations have stood there at various times

OTHERS WHO  
HAVE AP-  
PEARED  
THERE

to be questioned by the House or to make statements or to plead causes and indeed on some occasions to receive the thanks of the House for their services to the nation. The gossipy Pepys as readers of

the *Diary* will recall once came to the bar and successfully defended his administration of the admiralty. The Duke of Wellington was summoned to the bar in 1814 to be permitted to receive the thanks of the House for his services in the Peninsular Campaign. And fourteen years later Daniel O'Connell came there to plead for Catholic

<sup>1</sup> Sir Henry Lucy *Lords and Commons* (London 1921) p. 97.

The immediate occasion for the change of authority was the action of a certain journalist who was brought to the bar in 1871 for his publishing a report of the House proceedings. On rising from his knees, and being duly primed by Mr Speaker this unabashed offender brushed the dust from his trousers and claimed: 'What a damned dirty House! The members did not know whether to be angry or amused.'

**Emancipation** Many other historic examples might be given. Technically the bar is outside the House and hence beyond the scope of the rule that no one who is not a member may utter a word within the sacred precincts. The American custom of inviting distinguished visitors to address the legislature from the speaker's dais has no counterpart in England.

Another term which figures in the parlance of the House is the gangway. It is a passage way running at right angles to the center aisle. Reference is commonly made therefore to

the benches below the gangway or above the gangway. There is no rule governing where members shall sit (except on the two front benches) but the tendency is for the younger members to find seats below the gangway. This location in any event affords a better vantage ground from which to assail the ministers. During the time that the Labor ministry has been in office the Conservatives took the opposition side of the House above the gangway while the Liberals sat below it. The Irish Nationalist members in the old days always sat below the gangway on the opposition side—no matter which of the two parties was in power. It is a tradition of the House that these benches below the gangway can be counted upon to furnish trouble if a minister goes looking for it.

But in recent years the back benches have hardly lived up to this tradition. Some of the Labor members especially the old men from the Clyde supply noise and interruptions enough but they have hardly atoned for the withdrawal of that lively decoration which came from the green regions between Cavan and Cork. For more than half a century prior to the World War the Irish members flooded the chamber with their piquant individuality. They provided much of the eloquence, most of the humor, and all of the disorder. Their quickness of wit atoned for their lack of gentility. One day an absent-minded member on finishing his speech sat down on his tall silk hat and crushed it flat as a doormat. Whereupon an Irishman from below the gangway arose and gravely said: "Mr. Speaker, permit me to congratulate the honorable member that when he sat on his hat his head was not in it." A long-inded member goaded by flippant interruptions once undertook to admonish the House: "I am not speaking to you," he said, "I am speaking to posterity." Hurry up, called an Irish member, "or you will

soon have your audience in front of you Not all the humor has flown from the House even yet but a goodly portion of it went with the signing of the Irish treaty

When the House of Commons proceeds to take a record vote it is not the practice to call the roll as in the American House of

**THE DIVISION LOBBIES** Representatives A division is ordered by the speaker and, the House divides in a literal sense.

Adjoining the chamber with entrances from its vestibule are two rooms known as division lobbies When the question is put the members are herded into these lobbies Those voting *Aye* go to the right those voting *No* to the left Meanwhile electric bell begin to tinkle in the reading room, smoking room, restaurant, and elsewhere warning members that a vote is being taken Six minutes are allowed before the lobby doors are closed Then the members in each of the lobbies pass before a little desk and have their votes recorded Ordinarily the process does not take long — about ten minutes or so A roll call in the House of Representatives consumes nearly four times as long

The marshals of the House are the party whips It is they who steer the members into the division lobbies and make sure that all

**WHIPS AND THEIR DUTIES** stragglers are rounded up Each political party has two chief whips senior and junior besides several assistant whips The chief whip of the ministerial

party must make sure that a majority is within call at a moment's notice for a defeat in the division lobbies may spell irretrievable disaster to the ministry The chief opposition whip similarly employs all his ingenuity to catch the other side napping Both these functionaries must be vigilant resourceful good tempered and tactful They must be constantly in attendance no matter how dreary the debate becomes for the House may divide at an unexpected moment It was Disraeli I think who once said that the functions of a chief ministerial whip were to make a House to keep a House and to cheer the ministers The description holds good today

Members of all parties are under obligation to let their whips know where they can be found in case a hurry call has to be sent

**PAIRS AND PAIRING** out And if an important division is impending each member is in duty bound to get himself paired

The pairing is arranged by the rival whips Each has his list of absent members who have declared their desire to vote *Aye* or *No* These members are then paired off one against another



so far as they will go. The chief whip on the ministerial side holds the titular office of parliamentary secretary to the treasury and draws a salary as such, but he has no duties connected with the treasury. The three junior or assistant ministerial whips also have sinecure positions on the treasury pay roll. They are rated as junior lords of the treasury. The opposition whips get no emolument but only honor—and the hope of a salary when their party comes into power.

Among the present day functions of the House the oldest is that of receiving and presenting petitions. Originally the Commons received petition from the people and presented them to the king. The latter decided whether the petitions should be granted. The petitions still keep coming in, although not in such large numbers, and they no longer go to the crown for consideration. A few petitions are presented at almost every sitting of the House by members whose constituents have prepared them. But they are not read to the House. The member who presents a petition on behalf of his constituents merely indicates its nature and tells how many signatures there are to it. Thereupon the speaker directs him to drop the document into a sack which hangs to the left of the chair. At intervals the contents are carried to the committee on petitions, which is supposed to examine them carefully—but never does.

When a petition goes into the sack, that is the last of it. As well might it be dropped over the terrace into the Thames. <sup>1</sup> Monster petitions come to the House at times, petitions bearing various natures by the hundreds of thousands. They are carried down the aisle by attendants who deposit them at the foot of the clerk's table. Sometimes they are too big for the sack, in which case, after being formally presented, they are carried out again. The whole thing is nothing but a gesture, the shadow of what was once a reality. Petitions play a small part in the House procedure of today, but the tradition of their ancient importance is kept alive by the rule that they go first in line of priority over all other business in the House, no matter how urgent.

There is no clapping of hands in the House of Commons. Applause is not given in that way. When a member desires to show his approval of something that has been said, he cries "Hear! hear!" Others may join in the chorus until it assumes the proportions of a babel. But these ex-

RESENTING  
PETITIONS

WHILE  
OF  
THE

HOW THE  
HOUSE  
APPLAUDS

clamations do not invariably express sentiments of approval. By an appropriate modulation of the voice the words may be made to throw ridicule on what a speaker has said. The present government has done much for the worker asserts a minister. H— hear! Hear hear! comes the ironical ejaculation from the Labor benches—which means that the members of that party do not believe a word of it. Interjected at just the right moment these words are often used to puncture a swelling bubble of eloquence. The House uses other forms of vocal interruption. Groups of members join in shouting Order order! or Retract retract! Division division! Resign resign! and so on. Sometimes in the attempt to hush down a speaker they keep it up until the House is in a turmoil.

The speaker of the House in his endeavor to restore order does not pound a gavel. He has no gavel. His only weapon is his voice. Above the commotion he rises from his chair puts out his hand and quietly commands the honorable gentlemen to be in order. He is usually obeyed. No member is allowed to be on his feet when the speaker is standing. Disraeli once said that in his day even the rustle of the speaker's robe was enough to check an incipient riot. But it has not been so on all occasions. Sometimes a speaker has had to expostulate rather vigorously. He may call upon a member to retract the unpardonable expression which has caused the hubbub or to apologize for some disparaging reference to a fellow member. In the event of a refusal he may order the offending member to leave the House or in an aggravated case he may name him. When the speaker names a member his action is always followed by a motion to suspend the latter from the service of the House. This motion is put without debate and is invariably adopted. The

When addressing a member in the ordinary course of debate the speaker does not call him by name. No member designates that which he calls all members. It is always the Honorable Member for So-and-So or if he be a privy councillor he is styled as the Right Honorable Member. Members who belong to the army or the navy are always styled as the Honorable and Gallant Member. I will say as the Honorable and Learned Member. A member with a courtesy title (see p. 134) is referred to as the Noble Lord in the case of a lady (e.g. Lady Asquith) or the Duchess of Athol as the Noble Lady. A member refers to himself as his own party as my Honorable Friend to a member of the other party as the Honorable Member. The speaker addresses and refers to members thus same way except that he makes no distinction as to party affiliation. When he names a member for disciplinary purposes he says I name Mr So-and-So to the House.

suspension unless rescinded is for the balance of the session

Although there are galleries for visitors the theory still persists that the debates of the *House of Commons* are secret. Visitors are merely tolerated their right to be present at any time is not recognized by the rules of the House. This is shown by the way in which the House proceeds to clear the galleries when it wants them cleared. No resolve to go into executive session is ever presented as in the Senate of the United States. Some member of the House usually the prime minister merely draws the speaker's attention to the fact that strangers are present in violation of the rules. This ancient custom of spying strangers is a signal for the speaker to put the question that strangers be ordered to withdraw a question which is not open to debate. If the vote is in the affirmative the galleries are thereupon cleared even the representatives of the press being ordered out. The last occasion upon which strangers were spied in the House was during the two-day session on proposals for compulsory recruiting (April 25-26 1916). On this occasion not a soul was permitted within earshot except the members of the House the clerk and the sergeant at arms. But the clearing of the galleries it ought to be added takes place on rare occasions only there have been only three of them during the past seventy years.

Congress does most of its work in broad daylight the House of Commons prefers the hours of darkness. It often sits late sometimes very late. Occasionally it sits all night without adjourning. But its sittings ordinarily come to a close at midnight or thereabouts whereupon the principal doorkeeper steps forth a pace or two into the lobby and in a strident voice calls out: *Who goes home?* Through the library the smoking room the side corridors and even along the terrace by the Thames the cry resounds: *Who goes home?* Ministers and private members gather up their papers and drift down the center aisle through the swing-doors while the chorus of *Who goes home?* pours into their ears. Thus the Mother of Parliaments goes home.

More clearly than anything else among the odd ways at Westminster this cry brings back the London of Pepys and Wren and Defoe. From Westminster to London in those days was a lonely jaunt and the way was not safe for travel by night. The streets of the intervening parishes were policed to be sure—but only by tippling constables who spent

YONG  
STRANGERS

14TH  
HOUSE  
AT JOURNALS

A RELIC OF  
OLD LONDON

most of their time in the alehouses. Thugs and roisterers roamed the poorly lighted roads and did not hesitate to set upon lo wayfarers whether in vehicle or afoot. So individual members of the House did not dare go home alone and it became the practice to send squads of well armed yemen from the Tower to escort those who were ready to leave before the sitting adjourned. As each squad arrived its commander notified the doorkeeper and he sounded the call. Who goes home? Those who were minded to go had the opportunity. Or if they chose to remain a while longer the call would be reiterated when the next squad from the Tower arrived. Westminster has now become engulfed in Greater London and there is no safer city anywhere hence the practice of sending armed escorts has long since been abandoned. But the doorkeeper and his fellow attendants still do their vocal part, even as their predecessors did at three hundred years ago.

As a parting word to the members as they file out the door the attendants keep shouting. The usual time tomorrow. Sir

THE USUAL TIME The usual time tomorrow. But why should the commoners need this reminder? Everybody knows

that a quarter to three o'clock in the afternoon is the usual time for it is fixed in the standing orders and if perchance there were to be any departure from it, every morning paper in London would headline the fact. The members of today need no reminder as they leave the House but there was a time in bygone centuries when they had neither standing orders nor newspapers to inform them. So the attendants assumed the admonitory function and no one has ever prevailed upon them to give it up.

In the United States when a member of the House of Representatives desires to resign he merely hands his written resignation

MEMBERS OF THE HOUSE CAN NOT RESIGN to the speaker. A writ may thereupon be issued by the governor of the appropriate state for a period not to fill the vacancy. But a member of the

House of Commons is not permitted to resign in this direct and simple way. According to a rule which dates back to 1625 no member can resign his seat. Having been drafted for service by his constituents he must continue as their representative until the existing parliament comes to an end. This rule of course is a heritage from the days when service in the House was regarded as a burden to be unloaded at the first opportunity. Today although the privilege of serving in the House is eagerly sought by

Englishmen of all ranks the old rule against resignations persists unaltered

Yet there are practical considerations which make it desirable to relieve an individual member from further service when he insists upon it and a roundabout way of doing this has been devised. It is provided by the Placemen Act of 1705. By the provisions of this act any member of the House who accepts an office of profit from the crown is forthwith disqualified from further service.<sup>1</sup> The intent of this statute was to safeguard the House against the virtual bribery of its members by the king whose habit it was to bestow lucrative sinecures upon influential commoners thereby making them subservient to the royal influence. They became placemen and pensioners of the king ready to do his bidding in the House. But parliament became concerned at this impairment of its freedom and eventually decreed that the member who went on the royal pay roll would thereby vacate his seat.

NO <sup>Y</sup> THIS  
OBSTACLE IS  
OVERCOME

Now it happens that there is an ancient office in the gift of the crown known as the stewardship of the Chiltern Hundreds. The Chiltern Hundreds are three parcels of land in Buckinghamshire. Once upon a time this land belonged to the king and a royal steward was in charge of it. But the estate has long since been converted into parks so that there is no longer anything for the king's steward to do. Nevertheless the office has not been abolished. It is kept in existence for the sole purpose of providing a means of exit from the House of Commons. When therefore a member desires to vacate his seat he applies to the chancellor of the exchequer for appointment to this nominal post. The request is always granted a warrant is issued appointing the member to be steward of the Chiltern Hundreds during His Majesty's pleasure and notice of the appointment is duly inserted in the official gazette. The speaker thereupon takes cognizance of the fact that the member has disqualified himself by being appointed to an office of profit in the gift of the crown and accordingly declares him unseated. This done the newly appointed steward of the Chiltern Hundreds resigns and makes way for the next

THEY TAKE  
THE CHILTERN  
HUNDRED

<sup>1</sup> For a more detailed account of the members of the ministry see p. 87.

The warrant appoints him to the office of steward of the Chiltern Hundreds. This is a nominal office and does not involve any duties but that makes no difference.

member who desires freedom from service in the House. On a few occasions two appointments have been made and two resignations received within twenty four hours.<sup>1</sup>

An odd circumlocution it may seem, and a superfluous one. From time to time some Englishmen have thought it so. More than a hundred and fifty years ago a distinguished statesman asked leave to bring in a bill enabling a member to vacate his seat by merely handing his resignation to Mr Speaker but the House resented the proposed innovation and by a decisive vote refused to allow even the introduction of the measure. Could one find a better illustration of that loyal adherence to ancient customs which is so characteristic of parliament? The House enjoys its old customs, and that is the way to preserve them.

For centuries it was the custom of the king to prorogue parliament in person. With a glittering array he came in a royal coach to

HOW THE  
HOUSE  
ENDS ITS  
SESSION

Westminster mounted the throne in the House of Lords summoned the commoners there and read his speech to them. But nowadays parliament is usually prorogued by commission and the procedure is always

the same whether the prorogation is merely the close of a session or a prelude to the dissolution of parliament.<sup>2</sup> The crown appoints five lords commissioners (among them the lord chancellor is always included) to perform the duty. The commissioners in scarlet robes take their places on a bench in front of the great throne in the House of Lords. The faithful commoners are then summoned to the red chamber and the lord chancellor reads the king's speech to the assembled gathering. It is always a perfunctory deliverance thanking parliament and announcing that the work for which the session was called has been completed. When the commoners have heard it they go back to their own chamber and make ready to leave.

There are no votes of thanks to everybody for everything as in American legislatures. There are no speeches laden with an exchange of compliments. There is no presentation of a gold gavel or an

But what if too many members should happen to want to leave the House at once. In that case there are many other secure appointments, notably the guardianship of the Manor of Chipstead which can be utilized in addition to the Chiltern Hundreds. Occasionally a member has gone out of the House by this Chipstead route.

At a prorogation which precedes a dissolution no announcement of dissolution is ever formally made even though every member knows it. The announcement is published a little later.

illuminated address. The speaker rising from his place walks backward down the wide aisle between the benches bowing solemnly to his empty chair.<sup>1</sup> The sergeant at arms with the mace on his shoulder paces slowly after him. Ministers and members forgetting their political animosities gather in groups to say goodbye and to wish each other good luck in the coming election for a general election always follows a dissolution. The cry of 'Who goes home?' again resounds through the vaulted halls as the members pass the portals and are whirled away in the motors that stand chugging in line outside. 'Who goes home?' Some of them have gone home to stay there for the close of a parliament always marks the end of many political careers.

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The odd ways and pageantry of the House are touched upon in many books such as Sir Henry Lucy *Lords and Commons* (London 1921) A Wright and P Smith *Parliament Past and Present* (2 vols. London 1902) H Morrison and W S Abbott *Parliament: What it is and How it Works* (London 1934) H Graham *The Mother of Parliament* (Boston 1911) Michael MacDonagh *The Politics of Parliament* (2 vols. New York 1921) E Lumley *The Speaker's Chair* (London 1900) H Snell *Daily Life in Parliament* (London 1930) and J J Johnston *Westminster* (London 1928).

This odd custom is said to hark back to the time when the House met in St Stephen's Chapel. In those days the speaker bowed to the altar. The altar is there no more but the bowing continues. The members of the House when they enter the chamber during the gaveling also bow toward the speaker's chair.

## CHAPTER XIV

### PARLIAMENTARY FINANCE

This House will receive no petition for any sum relating to the public service, or proceed upon any motion for a grant or charge upon the public revenue, whether payable out of the consolidated fund or out of money to be provided by parliament, unless recommended from the crown—*Standing Order of the House of Commons No 66*

It is a fundamental principle of sound public finance generally recognized in all civilized countries that no taxes shall be levied or expenditures authorized without specific action by the representatives of the people. This principle has had ostensible observance in England for many centuries but it has only been strictly observed during the past two hundred and fifty years. Revenue and expenditure are by far the most important matters that come before legislative bodies and there are very few important projects of lawmaking which do not, directly or indirectly affect the interests of the taxpayer. Who holds the purse holds the power wrote James Madison in *The Federalist*. He was right. Having full power to tax and to spend a government needs no other authority. It was through its control of the nation's purse that the House of Commons rose to supremacy. Hence it is not surprising that money bills should take up a large portion of the time which the House devotes to its work. They are regarded as sufficiently important to have a special procedure of their own.

The pivotal point in British national finance is the institution known as the Treasury. It is the lineal descendant of the old Norman exchequer or revenue bureau of the king. Obviously the British Treasury of today is officered by a board the Treasury Board it is called consisting of a first lord of the treasury (who is usually the prime minister) the chancellor of the exchequer and several junior lords of the Treasury all of whom are members of parliament and of the ministry. In addition there is a parliamentary secretary and a financial secretary who are also members of the ministry.

IMPORTANCE  
OF MONEY  
BILLS

BRITISH  
PROCEDURE

1 THE  
TREASURY



And finally there is a permanent secretary to the Treasury who is not a member of parliament or of the ministry but is the head of the civil service.

Now although the Treasury Board is constructed in this plural fashion it is not really a board at all. Its members never meet or perform any collegial functions<sup>1</sup>. The first lord although he is titular head of the board does not <sup>ITS ORGANIZATION</sup> concern himself with its work unless some emergency arises. The junior lords and the parliamentary secretary are purely political officers. All the functions of the Treasury Board are performed in its name by the second lord of the treasury. This official who is better known as the chancellor of the exchequer is a member of the cabinet and one of its most influential members. The financial secretary is his assistant in parliament and in administration. It is the chancellor's function to regulate the public income and expenditure to propose changes in taxation or any measures affecting the public debt to pilot such measure through parliament to prepare the annual budget to collect the revenues to keep the various public services supplied with funds to control the currency and to supervise the banks. Surely a big enough task for any one minister! The Treasury provides the money for carrying on every branch of the administration hence its actual head (the chancellor of the exchequer) must keep in touch with them all. And this keeping in touch has developed into a considerable measure of supervision over all the other governmental departments.

The Treasury Board provides therefore a good illustration of the gap which so often intervenes between the nomenclature and the facts of British government. Nominally it is a board of five or six members headed by a first lord <sup>CURIOUSLY</sup> who is usually the prime minister. But its functions have been wholly transferred to a single official the chancellor of the exchequer who by the way has now nothing to do with the exchequer at all<sup>2</sup>. He is secretary of the treasury comptroller of

To this statement there is <sup>1</sup> i. e. no meeting. The members meet on occasions when new ministry is formed for the purpose of calling appointments and salaries.

<sup>2</sup> Henry Higgs *The Financial System of the United Kingdom* (London 1914) p. 81. See also T. L. Heath *The Treasury* (London 1927) and R. G. Hawtrey *The Exchequer and the Control of Expenditure* (London 1914).

The exchequer is the judicial department of British government. Its head is the comptroller and auditor general who is not a member of the ministry.

the currency and director of the budget all rolled into one. His office is the center around which the whole financial system of Great Britain revolves. But the chancellor acts always in the name of the Treasury Board and all his instructions to the various departments go out in the name of the Commissioners of His Majesty's Treasury.

#### THE ESTIMATES

The initial step in the financial work of parliament is the compilation of the estimates. In the autumn of each year a circular is sent by the Treasury to the heads of all departments asking them to furnish figures concerning their probable requirements for the next fiscal year. Thereupon the financial officers in the various departments put their pens to paper and when their estimates are ready send them down to the Treasury. They must be made in a form prescribed on uniform sheets and in considerable detail. Likewise they must be accompanied by explanations of all increases over the estimates of the preceding fiscal year. All fixed charges or charges upon the Consolidated Fund such as interest on the national debt, the civil list, the salaries of judges, pensions, and so on are not inserted in the estimates but are figured separately. More than one third of the entire national expenditures are in this category. As for the controllable expenditures there is a general understanding that if a department desires a substantial increase in funds for any of its activities it will consult with the chancellor of the exchequer or with his subordinates in the Treasury before including the amount in its estimates. In this way the Treasury has something approaching a veto upon departmental increases even before the estimates are made ready for parliament.

If a disagreement arises between the chancellor of the exchequer and the head of any department concerning a proposed increase the matter is referred to the prime minister or to the whole cabinet for adjudication.

When the estimates are all prepared and are in the hands of the Treasury the first step is to have them checked up with the figures of the preceding year. Numerous conferences then take place between officials of the Treasury and officials of the various departments with a view to getting reductions by mutual agreement. Meanwhile figures of probable revenues are prepared by the various departments to the best of their ability and when the total estimates have been footed

2 PREPARATION OF THE ESTIMATES

3 CONFERENCES ON THE ESTIMATES

up it is usually found that more money is asked for than can be provided by the existing taxes. Hence it becomes necessary to insist upon reductions of expenditure wherever this can be done with the least detriment to the public service or else to find some new sources of revenue. The chancellor of the exchequer makes up his mind as to the wisest course and then lays the situation before the cabinet. The cabinet after hearing his recommendations and after a full discussion of the various problems involved authorizes the chancellor to lay his estimates and proposals before parliament, with such modifications as may have been agreed upon.

The estimates of expenditure however do not have to wait until all questions relating to the revenue are passed upon by the cabinet. They are presented to the House of Commons as soon as they have been approved and preferably at the very opening of the session. A little later the chancellor of the exchequer makes an elaborate budget speech to the House in which he reviews the finances of the past—the revenue, the expenditure, the national debt and the surplus or deficit. This review serves as a prelude to a more detailed statement of the financial program for the current year—particularly as regards new taxes or increased taxes or reduced taxes. A generation ago this budget speech was an all day affair but in recent years it has been much abridged and most of the figures that formerly rolled from the chancellor's tongue hour after hour are now given to the House in printed form. Gladstone during his long parliamentary career delivered the annual budget speech on thirteen occasions sometimes reeling off his statistics for hours at a stretch.<sup>1</sup> He did it with a charm which one of his admirers characterized as setting figures to music. The budget speech it may be mentioned is made to the House sitting in Committee of the Whole.

For several weeks the House devotes a large portion of its time to this financial program approving the estimates and providing the funds. When debating the estimates it sits as a Committee of the Whole House in Supply when providing funds it sits as a Committee of the Whole House in Ways and Means. Hence the terms House in Supply and House in Ways and Means as they are colloquially used. The estimates are presented in sections and each section is taken up in votes or groups of items. The financial secretary of the Treasury

4 THE  
BGET  
SPE CH.

5 THE  
HOUSE IN  
SUPPLY

<sup>1</sup> See S. Buxton *Gladstone as Chancellor of the Exchequer* (London, 1901).

champions the civil estimates the secretary of state for war is responsible for presenting the military estimates the minister for air brings in the air force estimates and the first lord of the admiralty presents the naval estimates Thus the work on the floor is allotted to the men who know most about it Amendments may be offered to strike out or to decrease any item but no increases or new insertions can be proposed except by a member of the ministry for a standing order of the House (quoted at the head of this chapter) stipulates that no proposal of expenditure can be considered unless it is made in the name of the crown and only a minister has authority to speak in the crown's name This means as a matter of reality that there is no chance of getting an appropriation for any purpose whatsoever unless the chancellor of the exchequer agrees to it Rule No. 66 makes him as nearly a financial dictator as can be found in any country that maintains a system of representative government.

Occasionally however if good reasons have been shown during the discussion the minister in charge of the estimates (after consultation with the chancellor of the exchequer) will himself propose an increase or a new item but in general the influence of the House is restricted to eliminations and reductions only <sup>1</sup> In practice moreover the House accomplishes very little by way of revision downward for when the ministers decline to accept a reduction they can summon a majority of the House to stand by them as a matter of confidence On minor items the ministers sometimes give way for the sake of party happiness but on important ones they stand their ground The result is that the estimates go through with no drastic alterations and in a remarkably short space of time The opposition concentrates its fire upon a relatively few votes and permits the rest to pass without debate

The principal end achieved by these budget debates is not a reduction of proposed expenditures but a general airing of grievances and a wide ranging review of administrative policy If any member of the opposition is dissatisfied with some action of the home office, for example he bides his time until the estimates for that department are reached Then he moves a reduction in the minister's salary and uses this motion as a cover for his attack But in any event the

<sup>1</sup> By a ruling of the speaker no motion may be made to reduce the amount of a grant in aid For a discussion of grants-in-aid see Sidney Webb *Grant in Aid* (London 1920)

debates in Supply (exclusive of those on the supplementary estimates) must be concluded in twenty days. All votes become subject to the closure at the expiration of this time limit.

When the estimates have all been voted by the House in Supply and the various revenue proposals have been approved by the House in Ways and Means the whole is then embodied in two bills: a finance bill and an appropriation bill. The former deals with new taxes or changes in the rates of old ones; the latter authorizes all expenditures that have been agreed upon. Both are thereupon put through the usual stages and passed by the House.

7 THE  
REVENUE AND  
APPROPRIATION  
BILLS

After the House of Commons has finished with the finance and appropriation bills they are sent to the House of Lords, but the upper chamber has now no alternative but to pass them without amendment. This limitation was established by the Parliament Act of 1911. If the Lords receive a money bill at least one month before the end of the session it goes forward for the royal assent and thereby becomes law irrespective of whether the Lords concur in it or not. The royal assent of course is a mere matter of form, and when it is given the appropriations become available to the various departments. Then the Treasury proceeds to raise the revenues that have been authorized.<sup>1</sup>

THE HOUSE  
OF LORDS HAS  
NO POWER TO  
AMEND OR  
REJECT MONEY  
BILLS

But while all this estimating, debating, and assenting is going on, money must be had to carry on the government. To meet this need the House of Commons passes various votes on account; in other words it grants sufficient funds to carry the various departments along until the annual appropriations become available. These votes on account are lumped together in a bill which is enacted early in the session. This bill also provides a sufficient grant of money to cover any deficits that may have been incurred during the previous fiscal year.

VOTES ON  
ACCOUNT

# ENGLISH AND AMERICAN BUDGETARY PRACTICE

It will be noted from the foregoing outline that the British national budget is framed, presented, debated, and passed in two

It increases in the rates of income taxes or duties or customs duties when proposed the budget speech goes into effect—before parliament has passed the finance bill and presented it for the royal assent. If for any reason the proposed taxes do not go through, the additional taxes are refused, but this very rarely occurs.

divisions one dealing with expenditures and the other with revenue. But both divisions emanate from the same source namely the cabinet and they are considered by the same body that

THE CENTRAL  
IZATION OF  
RESPONSIBILITY FOR  
BRITISH  
NATIONAL  
FINANCE

is by the House of Commons sitting in each case as a Committee of the Whole House under two different names. The essential unity of the British financial system arises from the fact that the chancellor of the exchequer with the aid of his fellow ministers,

is responsible for preparing the entire budget responsible for what it contains and responsible for getting it adopted by parliament. The concentration of financial responsibility is complete which is not yet true of budget procedure in Congress despite the marked progress which has been made during recent years.

In the United States the estimates of expenditure are compiled by the director of the budget from figures submitted to him by the various departments. The director of the budget

CO ARISON  
WITH  
AMERICAN  
PROCEDURE

transmits these estimates to the President who in turn forwards them to Congress with his recommendations.

Thus far the British and American procedures are substantially alike inasmuch as the executive in both countries takes the initial step and submits to the legislative body a general plan of national expenditures. But there the parallel ends. In the House of Representatives the estimates go to a committee on appropriations which may recommend changes in them at will either up or down and from this committee they go before the whole House which has an unrestricted right both by law and by usage to increase decrease insert or eliminate. There is no rule as in the House of Commons that additions may only be made on recommendation of the executive. And after the House of Representatives is through with the estimates the Senate of the United States (unlike the House of Lords) takes them in hand making such further changes as it may desire. In a word there is no such executive control over financial measures in Congress as is exerted by the British ministers in parliament, and hence there is no such complete fixation of responsibility.<sup>2</sup>

There is a further difference. In Congress proposals for raising

For a full discussion and criticism of this procedure see J. W. Hills and E. A. Fell *was Brit. h. G. erment Finance* (London 1932).

For a more detailed discussion of the American procedure see the author's *Government of the United States* (4th edn. New York, 1936) pp. 371-381 and the accompanying references (p. 386).

the necessary revenues come from the secretary of the treasury through the President, but they may also be brought forward by any member of the House on his own initiative. And in either case they are considered by a different committee from that which handles the appropriations. Expenditures are handled by one set of men and revenues by another each working separately. The chairmen of the two committees confer a good deal and a certain amount of team play is secured but the responsibility is divided. Finally it will be noted that in the House of Commons when appropriations or revenue measures are under discussion the heads or deputy heads of the executive departments are on the floor to explain defend and answer questions. In Congress this is not the case. The head of a department may be asked to submit explanations in writing or to come in person before a congressional committee but he does not appear on the floor of the House or the Senate for he cannot be a member of either body.

All this does not mean however that the British budgetary system taking it as a whole is superior to the American. On the contrary there are some respects in which it is inferior. Definite fixation of responsibility is an excellent thing in its way it makes for economy in public expenditures

IN FACTS OF  
THE BRITISH  
PROCEDURE

but it inevitably involves a concentration of power. In Great Britain the cabinet, not the House of Commons is the body which really controls the finances of the realm. And the cabinet is tributary to the chancellor of the exchequer who is its financial chief and adviser. To this it will be replied of course that the chancellor is merely the creature of the House and absolutely responsible to it which is all true enough if one is discussing the theory of English government. But the fact is that the House of Commons with all its theoretical control of the ministry does not often increase or diminish a single item in the budget against the chancellor's will. Theoretically absolute its power in practice is slight. The occasions on which the House has virtually compelled the chancellor to accept changes against his own judgment and wishes are very rare. Some years ago a committee reported that in a whole quarter of a century it

GIVES TOO  
MUCH POWER  
TO THE  
CABINET

<sup>1</sup> One such occasion arose in 1937 when the chancellor of the exchequer Neville Chamberlain found so much unexpected opposition among the members of his own party in the House that he withdrew certain tax proposals of great importance and permitted other significant changes to be made in the budget.

could not find a single instance in which the House by its own direct action had reduced on financial grounds any estimate submitted to it by the ministry -

Still neither the chancellor of the exchequer nor his colleagues wish to take the chance of driving their followers to mutiny. On the contrary they are good politicians and quite sensitive to public opinion. They avoid so far as practicable the submission of proposals which stir up opposition among the people or arouse undue antagonism in the House. Even on the floor after the proposals have been presented they will give way if it seems political strategy to do so. With due allowance for all this ministerial sensitiveness and courtesy however the English cabinet is the real comptroller of the national purse. If the British budget in most cases were put directly into effect as soon as it has been approved by the cabinet without going to the House at all its final figures would not be appreciably different. But in that case the opposition would be deprived of what is now its best opportunity for launching its criticisms against the general policy of the government.

It should be explained of course that the rule against inserting new items in the estimates or increasing items already there is not embodied in a statute but merely a rule of its own which the House of Commons can repeal at a time. It is a self-denying ordinance which the House imposed upon itself more than two centuries ago and which it could rescind tomorrow if it chose. But there is no probability that it will ever do so for the rule is one which most Englishmen (and many Americans also) look upon as a good one for any legislative body to have.

On the other hand the fact that private members cannot move to insert or increase any item causes many of them to lose interest in the budget. For they are interested in opening not in closing the public purse. The member in any legislative body who displays a genuine zest for cutting down items of expenditure rather than in raising them is likely to get himself regarded as a maverick by his colleagues. The only success that such members are likely to have is to succeed in getting someone else to succeed them at the next election. So night after night when the House is in Supply the chamber may be half empty. As an

THE  
COMPROMISE

THE FAMOUS  
RULE NO. 66

DEADENS THE  
INTEREST OF  
THE  
INDIVIDUAL  
MEMBER.



Irish member once complained it is overrun with absentees

It is hard to imagine anything more dreary than these debates on the estimates—dreary for everybody except the minister who is putting his items through and the few opposition critics who are nibbling at him. The ministers can sit snug for they know that time is on their side. When the twenty days are up the estimates must be voted on, and they have the votes to put them through. Hence although the discussions appear to be conducted in a go-as-you-please fashion the estimates are really put through the House of Commons under much greater pressure than is the case in the House of Representatives. Sometimes half the entire estimates go through at Westminster in a single day—the last day. This means that millions are voted without any parliamentary discussion at all. It is a fair criticism of the British House of Commons and one often voiced by its own members that inadequate discussion is devoted to the financial problems of a great empire which is hard pressed to raise the billion pounds sterling that it now spends each year.

THE DRY  
BUDGET  
D RATES.

The House of Commons has long appreciated the need for some alterations in its financial procedure. In 1912 it created a Select Committee on Estimates to go over the proposed appropriations before they came up in the Committee of the Whole House and to report that if any economies consistent with the policy implied in those estimates should be effected therein. But when the World War came upon Europe this select committee was literally stamped out of existence by the huge increase of expenditures. Later the House ordered that further study be given the matter and appointed a committee on national expenditures to work out a plan whereby the estimates might be assured of more careful consideration. This committee made various recommendations and although these have not yet been adopted one of them is particularly noteworthy because it indicates where the financial procedure of parliament is a good deal better. This is the proposal that amendments offered by members when the House is sitting in Supply should not be treated as hostile to the ministry or as involving any want of confidence in it but merely as business propositions on which the House should be free to disregard party lines. This of course would greatly weaken the cabinet's control over financial measures in parliament and would undoubtedly lead to the making of many changes in the estimates which the ministers,

ATTEMPTS TO  
IMPROVE THE  
PROCEDURE

under the present usage would never tolerate as a regular practice

When the appropriation and finance bills have been duly passed by parliament and have received the royal assent it is the function

THE CONTROL  
OF DISBURSE-  
MENTS.

of the Treasury to carry them into operation. Practically all the national revenues whether from customs excises death duties income taxes or such national services as the post office go into a repository known as the Consolidated Fund. This fund is kept on deposit in the Bank of England from which it is checked out to the paymaster general who distributes it in payment of salaries and bills. Before any transfer of money to the paymaster general is made however it must be approved by the comptroller and auditor general an officer of high standing who is head of the exchequer independent of the Treasury and responsible to parliament alone. His duty is to make certain that an appropriation to cover the expense has actually been made by parliament and that this appropriation has not been already exhausted.

All appropriations are still made to the crown as they were in the middle ages. But they are earmarked for the use of specified departments or services and it is not within the power of the crown to divert the money to other uses. On the other hand the spending of an appropriation is not obligatory. The Treasury can withhold an expenditure after it has been authorized and leave the money unspent.

In view of the fact that all the financial needs of the government for the fiscal year are embodied in a large appropriation bill and

HOW  
EMERGENCIES  
ARE HANDLED

passed by parliament during the course of each fiscal year it may well be asked. How about the unforeseen needs which must inevitably arise after parliament has made its appropriations and is no longer in session? How are unexpected and urgent calls for military or naval outlays met. There is an element of flexibility in the British financial system which permits the government to take care of such emergencies. In the first place the regular estimates contain in the case of each department or service an allowance for unforeseen contingencies. From long experience in the preparation of estimates each department is able to figure out a sum that may reasonably be expected to cover things unforeseen and unexpected. Then there are certain funds distinct from the Consolidated Fund which can be drawn upon by the Treasury when emergencies arise either at home or

abroad. It is required however that all advances from these funds shall be reported to parliament and repaid out of the appropriations of the next fiscal year.

Furthermore it is provided in the annual appropriation act that if a necessity shall arise for incurring military or naval expenditure not covered by specific appropriations and which cannot without detriment to the public service be postponed until provision can be made for it by parliament in the usual course the Treasury may authorize such expenditure out of any surplus funds available at the moment in the same department. There are occasions however when the emergency is too great to be met by any or all of these provisions in that event parliament must be hurriedly summoned and asked to make new appropriations.

TRANSFERS  
FROM  
SURPLUS

In the United States when Congress appropriates money for the use of the various departments and services the heads of these departments are not given much discretion in spending it. Money voted for the needs of one bureau in a department cannot be used for the needs of another bureau in the same department, nor can funds voted for one purpose be used for another purpose even within the same bureau,—for salaries let us say instead of materials and supplies. The American tendency is to tie the executive officials tight by designating in precise detail the purpose for which the money can be spent. If an amount is appropriated for equipment, and the equipment turns out to be unnecessary this money cannot be used for materials or supplies or services or anything else that might be accounted just as useful. It is true that during the first Roosevelt administration (1903-1917) large sums were placed at the disposal of the chief executive without much restriction as to the precise way in which they should be used. But the situation during these years was one of great urgency. Under normal circumstances Congress decides how every dollar shall be spent.

TRANSFERS  
FROM REGU-  
LAR APPO-  
RIATIONS

1. IN  
AMERICA.

In Great Britain a good deal more latitude is allowed. There the appropriations are arranged by votes which are divided into subheads, and these again into items. Parliament passes the appropriations by votes not by subheads or items leaving to the Treasury the right to transfer money from one subhead or item to another. Thus it is less rigid

2. IN GREAT  
BRITAIN

than Congress in earmarking appropriations for specific purposes but the Treasury in England takes up the slack that parliament leaves. Next to nothing can be done in any department by way of changing the details of expenditure: the salaries of clerks or the duties of public employees without the approval of the Treasury. If the home office wants an additional inspector of constabulary or the foreign office desires to add an additional secretary to the staff of a British embassy somewhere, a request must be submitted to the Treasury (the chancellor of the exchequer) and sanctioned before it becomes effective. This paternal authority of the Treasury rests upon long usage and is not now questioned or resented by the various departments. It has the merit of allowing all reasonable leeway while providing a definite responsibility for the details as well as for the gross amounts of expenditure.

The total public revenue of the United Kingdom for 1936 amounted to nearly a billion pounds sterling; that of the United

States was about twice as much. The chief sources of national revenue in Great Britain are duties on imports, excises on liquor, tobacco and various other luxuries, inheritance taxes (estates taxes and death duties they are called), income taxes and surtaxes, corporations profits taxes, motor vehicle taxes, land taxes, stamp taxes on legal documents, and profits from government enterprises (the postal, telegraph and telephone services). It will be noticed that almost every conceivable source of revenue is being tapped to meet the enormous expenditures which have been placed upon the country as a legacy of the World War, the subsequent industrial depression, and the new rearmament program.

In connection with British national finance the Bank of England deserves a word for it is the depository of the national funds and

the government's chief fiscal agent. Founded in 1694 for the purpose of providing the nation with loans, it has long enjoyed not only the exclusive right to receive such government deposits as are kept in England but a virtually exclusive right, among English banks, to issue paper money. Unlike the federal reserve banks of the United States the Bank of

Both privileges are enjoyed by banks in Scotland. The Bank of England's monopoly as respects both deposits and notes is confined to England and Wales. A few English banks in 1844 had the right to issue paper money; prior to 1844 have been permitted to continue in the enjoyment of this privilege. The total amount of these issues now outstanding is relatively small.

England is not subject to control by a government board. The British government owns no stock in the bank and appoints none of its directing officials. Having no depositary of its own it merely uses the Bank of England for this purpose as a private customer would do. The bank receives the government's revenue credits it to the proper account, and pays it out under the direction of the paymaster general. The Bank of England also serves as a registry for government bonds and acts as the government's agent in paying interest upon the national debt.<sup>1</sup>

All the financial accounts of the national government are audited in the office of the comptroller and auditor general. This official is appointed by the crown, holds office during good behavior and cannot be removed except at the request of both Houses of Parliament. He has no power to disallow any item of expenditure and merely reports irregularities to the Treasury for such action as it may see fit to take.<sup>2</sup> But the comptroller and auditor general make an annual report to parliament and this report is referred to the standing committee on public accounts which is appointed in the House of Commons at the beginning of each session. A leading member of the opposition is usually appointed chairman of this committee. Its business is to go through the report and accounts, noting cases in which the appropriations have been exceeded, hearing explanations of any irregularities, and finally reporting to the House. The moral effect of such a report is considerable.

AUDITING THE  
ACCOUNTS

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An informative volume on *The System of Financial Administration of Great Britain* by Messrs W. F. Willoughby, W. W. Willoughby, and S. M. Lindsay is published by the Institute for Government Research (New York 1917). Henry Hoag's *The Financial System of The United Kingdom* (London 1914) is full of much value despite the fact that it is a prior publication. An up-to-date book on *British Government Finance* by J. W. Hills and E. A. Fellowes (London 1932) is both explanatory and critical of the

For all details see W. D. Bowman, *The Story of the Bank of England from its Foundation to the Present Day* (London, 1937).

Mention may be made of a proposal along somewhat similar lines, with respect to the functions of the comptroller-general of the United States which was recently put forward by the President's committee on governmental reorganization. This proposal which has not yet been favorably cited upon by Congress would take away from the comptroller-general his present authority to disallow payments before they are made.

system. F. C. Dietz *English Public Finance* (New York 1933) is also valuable. Mention should likewise be made of R. G. Hawtrey *The Exchequer and the Control of Expenditure* (London 1921) E. H. Young *The System of National Finance* (2nd edition London 1924) and H. J. Robinson *The Power of the Purse* (London 1928). T. L. Heath *The Treasury* (London 1927) is an excellent general survey published in the Whitehall Series.

The course of British budgets during the past quarter of a century may be followed in Sir B. Mallet *British Budgets 1887-1913* (London 1913) A. H. Gibson *British Finance 1914-1921* (London 1921) F. W. Hirst and J. E. Allen *British War Budgets* (London 1926) H. F. Grady *British War Finance 1911-1919* (New York 1927) and B. Mallet and C. O. George *British Budgets 1921-1933* (London 1933). A good brief account of procedure (with a bibliography) may be found in A. E. Buck, *The Budget in Great Britain Today* (New York, 1934).

More general works on public finance are E. H. Davenport, *Parliament and the Taxpayer* (London 1919) C. F. Bastable *Public Finance* (London, 1903) H. Dalton *Principles of Public Finance* (4th edition London 1927) A. C. Pigou *A Study in Public Finance* (London 1927) M. E. Robinson, *Public Finance* (London 1922) and G. F. Shurras *The System of Public Finance* (London 1925).

## CHAPTER XV

### ENGLISH POLITICAL PARTIES A SKETCH OF THEIR HISTORY

Parties are inevitable \ free large country has been without them. \ n has shown how representative government could be worked without them. They bring order out of the chaos of a multitudinous voters. If parties cause some evils they exert and mitigate others.—*Lord Bryce*

No discussion of the art of government can lay claim to completeness if it disregards the place and function of political parties in the mechanism of the commonwealth. True enough political parties are not of the government they are below or behind it they work in the twilight zone of politics yet their role in the actualities of representative rulership is undeniably great. No free large country has ever been without them as Lord Bryce has said. No free country ever can be without them—and stay free. Parties of one kind or another—Lancastrians and Yorkists. Cavaliers and Roundheads. Whigs and Tories. Liberals and Conservatives—have been functioning in England for at least five hundred years ever since England had a parliament worthy of the name.

WHY  
POLITICAL  
PARTIES  
EXIST  
IN  
PARLIAMENTS  
GOVERNMENT

England in fact is the ancestral home of political parties as we now understand them that is of groups organized to promote by peaceful means their own conceptions of the general welfare. Political parties in this sense are of British origin because responsible government is of British origin. Partyism and responsible government are inseparable one goes with the other. Thoughtless people sometimes assure us that the world would be better off if partyism and party rivalry were amputated from the body politic—but when the operation is successful the liberty of the individual dies in the process. This has been shown in Russia Germany and Italy where all political parties except the dominant one have been snuffed out.

THE BRITISH  
ORIGIN

Parties are inevitable because the people of any country when

given the privilege of disagreeing about their government, are sure to take advantage of it. They will not be of one mind as to how the government ought to be carried on. On the other hand they will not split into an indefinite number of small groups. They will range themselves into two, three, four, five or some other small number of parties—because there are only so many possible attitudes toward the more important political issues. It is a common saying that there are two sides to every question. In politics there are often more than two. Take the tariff for example. You can raise it, lower it, revise it (by raising some duties and lowering others) or leave it as it is. Here is a political issue with four sides to it, and consequently it affords an opportunity for at least four groupings of political opinions.

So it is with other political problems: the alternatives are reduced by the nature of the issue or by practical considerations to five, four, three—and frequently to two. Anyhow as someone has cynically remarked there are only two sides to a public office—the outside and the inside. Parties exist therefore because although men and women are ostensibly free to form their own individual opinions on political questions they find themselves confronted with a limited number of alternatives and if you will a limited number of offices.

There has been much controversy as to whether political parties are good or evil. Most of this discussion is beside the point. The vital question is not whether political parties are a bane or a blessing but how they can best be made to serve the interests of democratic government. How can we make them help not hinder a scheme of government by the consent of the governed? And the answer to this vital question will never be secured by ignoring the existence of political parties, or by endeavoring to describe a government on the assumption that they can be left out of the reckoning.<sup>1</sup> Political parties, by whatever name they may be known should be regarded in the same light as parliaments, presidents, prime ministers and courts—as an essential part of the governing mechanism.

As for the origin of parties they probably began with human nature.

One of the most remarkable things about the older books on English government is the way in which they ignored this aspect. They dismissed parties and partyism as irrelevant to the main theme. Until Lowell's *Government of England* appeared in 1908 no book on the subject contained even a summary discussion of English political parties in their relation to the actual workings of English government.



ture Men have thought in groups ever since they began to think It is much easier to think that way Thinking is work The generality of men prefer to let others do it for them They take their opinions ready-to-wear It is sometimes said that these earliest groups were factions not parties That is true for they were literally not metaphorically at swords points with each other Victory was not decided by counting heads but by breaking them Battle axes not ballots were what settled the outcome The faction which won took all the power and all the rights Its opponents were treated as rebels insurgents enemies of the state They were dealt with as the Russian Bolsheviks in our own day have treated the counter revolutionaries or as the German Nazis have dealt with the Communists

THE EARLIEST  
PARTIES OR  
FACTIO 3.

The student of history does not need to be reminded of the factional groupings which existed from earliest times down to the close of the middle ages He has read of Pharisees and Sadducees Patricians and Plebeians Guelfs and Ghibel lines Perhaps it has not occurred to him that these were political parties in embryo Their aim was to get the upper hand to control the affairs of the community If we call them factions rather than parties it is only because their methods were crude or violent In mediaeval England these political factions fought each other not only on the floor of parliament but sometimes on the battlefields as well The Lancastrians and Yorkists with their long drawn out and bitter rivalry kept the land in a turmoil for almost a century

EVOLUTION  
OF PARTIES IN  
ENGLAND

The Wars of the Roses were the work of politicians who had not yet learned to settle their controversies by the arbitrament of the ballot box These wearers of the red rose and the white rose were members of rival parties dynastic and anti-dynastic parties So were the Cavaliers and Roundheads of the Stuart era Today we could call them Monarchists and Republicans Legitimists and Reconstructionists Conservatives and Progressives or by some such appellations

LANCASTRIANS  
AND  
YORKISTS

CAVALIERS  
AND  
ROUNDHEADS

A little later when the supremacy of parliament became definitely established under William III the nicknames Tory and Whig regularly replaced the older designations The Tories perpetuated in large measure the traditions and opinions of the Cavaliers while the Whigs did the same for the Roundheads but with this difference that it was no longer necessary

WHIGS AND  
TORIES

to change the monarch in order to change the government. Changing the government now meant getting control of parliament and to this task both parties devoted their energies. Their rivalry was transferred from the battlefield to the forum. Paper replaced powder as a means of ascertaining the will of the people.

Yet the rivalry of the parties was no less keen than it had been in the age when a clash of arms decided the issues. Through the eighteenth century the Whigs and Tories fought each election as though the destiny of the nation depended on it. First one party succeeded then the other. The Whigs controlled a majority in the House of Commons during the greater portion of William III's reign then the Tories replaced them for the most part until 1714. Here the alternation came to an end and for the next forty-seven years the Whigs held the mastery without interruption.<sup>1</sup> Toward the end of the eighteenth century the Tories managed to work back into power once more and from the era of the American Revolution to the eve of the Great Reform Act their hold was almost unshaken.

#### FROM THE GREAT REFORM TO THE GREAT WAR

Since the great reform of parliament in 1832 the alternations in party ascendancy have been more frequent. The old nicknames

POLITICAL  
PARTIES  
SINCE THE  
REFORM OF  
PARLIAMENT

Tory and Whig were discarded soon after this date and the more designatory appellations of Conservative and Liberal took their place. The Conservatives continued the Tory tradition but in a somewhat modified form. They were the partisans of the established order

and opposed most of the notable reforms which followed one another in quick succession during the years 1832-1835. The Liberals on the other hand championed these reforms in government in industry and in social welfare.<sup>2</sup> As time went on however the Conservatives softened their conservatism and proceeded to do some reforming on their own account. Under the leadership of Sir Robert Peel some of them joined with the Liberals in repealing the Corn Laws, for example, thus removing the import duties on grain and definitely committing the country to the policy of free trade. Incidentally

<sup>1</sup> This was partly due to the great genius of Walpole as practical politician. He was prime minister from 1721 to 1742. But it was also due to the misfortune of the Tories who became involved in the two unsuccessful Jacobite rebellions of 1715 and 1745.

For example the Factory Act (1833) the Poor Law Act (1834) and the Municipal Corporations Act (1835).

this action split the party wide open and when the reactionaries once more got the upper hand the free trade Conservatives were compelled to take refuge in the Liberal camp

It was around the middle of the nineteenth century that English party lines became well defined and consolidated. Conservatives and Liberals joined issue on the great political questions of the period. In general the Conservatives championed the prerogatives of the crown, the powers of the House of Lords, the privileges of the Established Church, the interests of the landowner and the industrial employer, and the cause of British imperialism. They drew their chief strength from the upper social strata of the kingdom, the nobility, the squires and esquires, the country gentlemen, the clergy of the Established Church, and the upper crust of English society in general. The Liberals, on the other hand, drew more largely from that element of the British population which has been compendiously known as the middle class, although they also brought into their ranks many industrial proprietors who had emerged well to do from the Industrial Revolution.

THE VIC-  
TORIAN ERA

The Liberal policy was to change existing conditions in government and in industry, both of which had drifted out of touch with the new conditions of life. They put emphasis on human rather than on vested rights. Their economic ideal was freedom of trade, free competition, *laissez faire*. They favored the extension of the suffrage and believed that if the worker were duly enrolled as a voter all other things would be added unto him. Fundamentally the difference was that the Conservatives habitually looked upon themselves as the guardians of rights which had become sanctified by tradition, while the Liberals claimed to be the party of individualism, progress, and emancipation.

It is true, of course, that the actions of the two parties did not always square with these professions. At times the Conservatives found themselves promoting electoral reform while the Liberals opposed it—for example on the question of household suffrage in 1867. Two great opposing leaders came to the front during this period—Benjamin Disraeli and William E. Gladstone. Disraeli, the child of middle-class Jewish parents, began his political career as a reformer but became the idol of the Conservatives. Gladstone, the son of a knight, a graduate of Oxford, was a Tory by inheritance, by temperament, and by early

DISRAELI AND  
GLADSTONE

allegiance but he led the Liberal party for more than thirty years. Under these two notable leaders all Britain ranged itself into rival camps and the two party system became firmly entrenched. The defeat of the Conservatives always meant the triumph of the Liberals, and when the Liberals lost an election there was never any doubt as to who had won it. There was no need for coalition ministries, and there were none during the long interval from the close of the Crimean War in 1856 to the opening of the World War in 1914.

But conditions within the ranks of the two parties during this long period were not always serene. A considerable breakdown and

THE S LIT  
OF 1886

realignment took place for example in 1886. To

understand this episode it is necessary to know some

thing about that ancient troubler in British politics,

the Irish question. The task of governing Ireland as will be shown in a later chapter has been one of the most persistent and perplexing of all the great problems that the British people have had to

ON THE  
IRISH  
QUESTION

deal with. There was an Irish problem in Plantagenet

times and it persisted under the Tudors. It was

fanned into flames of rebellion under the Stuarts.

The Hanoverians tried to stifle it and failed. Or more accurately they settled it but found that it would not stay so. Accordingly the Irish question came full grown into the nineteenth century and in spite of renewed attempts at settlement during the long Victorian era it was still running strong when the twentieth century hove into view.

In one of his whimsical moods the late Samuel M. Crothers suggested that here was at least one topic which William the Conqueror, Richard the Crusader, Henry the Eighth, Oliver Cromwell, the Duke of Wellington, Benjamin Disraeli, and even Ramsay MacDonald might all of them feel qualified to discuss if they ever chanced to foregather in the Great Beyond. How was the Irish question getting along when you left the land of the living? Any one of them might ask the others by way of starting the conversation. For although separated in their mundane activities by nearly eight centuries they had all come into contact with this prize squabble of all the ages.

Ireland entered into a union with England in 1800 giving up her own separate parliament and becoming entitled to approximately one hundred members in the British House of Commons. This union was unpopular in the southern portions of Ireland from the very out-

set, and these southern constituencies began to elect members of parliament who were pledged to a restoration of Irish home rule. Hence a group of Irish members calling themselves Nationalists made their appearance at Westminster and gradually increased in strength as the nineteenth century wore on. Under the leadership of Charles Stuart Parnell these Nationalists became during the eighteen-eighties an aggressive element in the House of Commons. Although numbering only seventy or thereabouts in a House of nearly seven hundred members they sometimes held the balance of power and holding it, they could overturn a ministry at will. In 1885 for example they utilized their tactical position to overthrow the Gladstone cabinet. A Conservative ministry was then installed but being even less disposed to grant the concessions which Ireland demanded from England it also incurred the wrath of the Nationalists and was ousted.

THE HOME  
RULE ISSUE

So it became evident that one or the other of the two major parties would have to effect an alliance with the Nationalists and thus the Liberals proceeded to do. Gladstone in a fateful decision committed his party to the Irish cause. His action was not dictated by considerations of political strategy alone for he had become convinced that the Irish cause was a just one. In 1886 therefore he brought into the House of Commons a bill providing for the reestablishment of a parliament in Dublin. But Gladstone could not carry the whole Liberal party with him on this issue and in the end the Liberal ranks were split asunder. About a hundred Liberal members of parliament bolted the home rule bill in order to the Conservatives and defeated the measure thus forcing Gladstone out of office. This affiliation of Conservatives and Liberal Unionists (as the seceding Liberals called themselves) became permanent. So did the alliance between the remaining Liberals and the Nationalists. The accession of the Liberal Unionists gave the Conservative party a great revival in strength, for among the insurgents were many able young parliamentarians. To the same extent it weakened the Liberals for although they could not count upon the general support of the Nationalists these Irish members were not always amenable to party discipline.

THE IRISH  
QUESTION

This realignment of 1886 did not however destroy the two-party system in parliament. Liberals and Nationalists continued to vote together on important questions of policy so did Conservatives

and Unionists. In the case of the latter the fusion became so complete that the name *Conservative* fell into disuse and all the members of the party were commonly known as Unionists. Ministers went into office or were cast out on straight party votes; there was no third party holding the balance of power. The Unionists were in power from 1886 to 1892, the Liberals from 1892 to 1895, the Conservatives again from 1895 to 1905, and the Liberals once more after 1905. Under this regular alternation the principle of ministerial responsibility based upon the two-party system appeared to be functioning perfectly.

Then came a new turn in affairs caused by the phenomenal rise of the Labor party. There were Labor members in the House of Commons before 1900, but they did not belong to an organized party. Their numbers were small and they counted for little. Save in a few constituencies the Labor vote as such was not well organized or fully marshalled behind its own candidates. In 1899, however, the British Trade Union Congress directed the appointment of a committee to arrange a conference of the trade unions and the socialist societies for the purpose of devising ways and means of securing an increased number of Labor members in parliament. Out of this action in 1900 grew a federation of trade unions, cooperative societies, socialist organizations, and other bodies under the name of the Labor Representation Committee. This name a few years later was changed to Labor party.

The work of effecting a thorough organization of the new party was now more vigorously carried on, and at the next general election, in 1906, no fewer than twenty-nine Labor members of one stripe or another—socialist and non-socialist—were successful in obtaining seats. This group perfected a regular parliamentary organization with its own whips and its own policy. But the Laborites did not set rank as a third party in the usual sense of the term, for they voted on most occasions with the Liberals. In the country, moreover, Labor remained a loose federation, not a unified popular party. There was an annual congress of delegates representing labor unions, trades councils, socialist societies, and other affiliated organizations, but the congress had not yet become a dominating authority and the local organizations retained a large measure of independence.

From the election of 1906 until the opening of the World War

accordingly the Labor party did little more than hold its own in parliament. This was in some measure due to the fact that the party became too closely linked up with the Socialists. During these years the strength of the Laborites in the House of Commons was less than fifty votes but they exerted a much greater influence upon the course of legislation than this figure would indicate. They were in considerable degree responsible for several measures of social and industrial amelioration which the Liberals put through parliament during the years 1910-1914.<sup>1</sup>

THE DECADE  
PRECEDING  
THE WAR.

#### SINCE THE WAR

Then came the war and with it a sudden change in the exigencies of British party politics. A Liberal ministry was in power when the conflict began but it was presently merged into a coalition cabinet representing all parties. The Labor party was given one member in this coalition and during the early years of the war all elements worked in harmony. Political strife was momentarily adjourned both in parliament and in the country. But it did not remain adjourned until the end of hostilities. Lloyd George replaced Asquith as prime minister and after this change the old time Liberals began to lose their strength in the coalition. More Conservatives (Unionists) were called into it and it ultimately became with the exception of the prime minister and a few others a Unionist aggregation. Labor then withdrew its participation and with a considerable body of dissenting Liberals created once more a regular opposition in parliament.

ARTY  
POLITICS  
DURING  
THE WAR

No general election took place in England during the war. The existing parliament merely prolonged its own existence by passing a statute thus giving a fine example of parliamentary supremacy. All political parties were agreed upon the wisdom of avoiding the turmoil of an election until the war could be ended. But immediately after the armistice while the victors were still in high humor the Lloyd George coalition ministry decided that it was a propitious time for calling the people to the polls. Hence the khaki election of December 1918 was held. It resulted in an overwhelming victory for the coalition of Unionists and Liberals under Lloyd George's titular leadership.

THE KHAKI  
ELECTION  
OF 1918

Very soon however the coalition began to disintegrate. That is

<sup>1</sup> The old national association of trades unions was lawfully reconstituted in 1911 and the minimum

what party coalitions almost always do after a great victory In

THE END OF  
THE  
COALITION  
AND THE  
ELECTION OF  
1922

1922 the Unionists notified Lloyd George that they would no longer support him and as they had formed a large fraction of the coalition's strength he resigned the prime ministership The Unionist leader Bonar Law took his place and advised a dissolution of parliament

In this election campaign of 1922 the Unionists placed before the voters a program of old fashioned conservatism, the keynote of which was a demand for tranquility

Now it is a significant fact that a great war is almost always followed in the first instance by a swing to the Right in other words a reaction against liberalism People want a recess from excitement and a return to normalcy An undertow a revulsion from the idealism of the war period gets under way<sup>1</sup> In England the Unionists got the benefit of this and virtually swept the country They came through the election with more seats than the Liberals and the Labor party put together Nevertheless Labor made a surprising gain by more than doubling its quota of members in the House of Commons It now became the official opposition while the Liberals went to a place below the gangway

The new Unionist ministry although it rode triumphantly into power with a huge majority in its wake, proved to be short lived<sup>2</sup>

THE UNIONIST  
MINISTRY  
OF 1923

Like most post war administrations it was dull and unimaginative Its prime minister Bonar Law a Scottish business man of recognized ability who soon

became seriously ill transferred the premiership to one of his colleagues Stanley Baldwin The latter found himself beset by an unusual array of difficult problems both foreign and domestic Among them the problem of unemployment was the most serious and in attempting to solve it the Unionists (Conservatives) met their Waterloo The Baldwin ministry decided that the only way to deal effectively with unemployment was to abandon free trade to impose a protective tariff and thus to procure a revival of British industry

For a further discussion of this topic see the chapter on 'The Law of the Pendulum,' in the author's *Irish Government* (New York 1933) pp. 65-70

The term Unionist lost most of its original meaning when the Irish Free State was established—though not entirely so because the Ulster question still remains (see p. 287) In a general way there is now no essential difference between Unionists and Conservatives, but the tendency is to perpetuate the latter term rather than the former



Now it is a tradition of English government that when a ministry adopts any marked reversal in policy for which it holds no mandate from the people it should present the *Vote* to the voters before attempting to carry the new proposal through parliament. In obedience to this tradition therefore another general election was held in 1923. The Conservatives urged the adoption of a tariff on imported manufactured products (but not on foodstuffs) while both the Liberals and the Labor party clung to free trade. The verdict at the polls was against the tariff proposal, but decisive as regards the formation of a new ministry for although the Conservatives remained the most numerous single group in the House of Commons they no longer possessed a clear majority. The Labor party increased its strength in this election and continued to form the second largest party in the House.

ITS TACTICAL MISTAKE.

When the House of Commons assembled after the election of 1923 the Labor leader (Mr Ramsay MacDonald) offered a resolution declaring that the Baldwin ministry did not possess the confidence of the House. The Liberals joined hands with Labor in supporting this resolution and the Baldwin ministry thereupon resigned. In accordance with the established custom, the leader of the party which had been mainly instrumental in defeating the ministry was then summoned to become prime minister. Mr Ramsay MacDonald accepted the post, formed a ministry from the Labor party and proceeded to carry on the administration. His cabinet was seriously handicapped however by not having a majority of its own adherents in the House. Being dependent upon the Liberals for every day of its existence the Labor ministry found itself unable to carry out the promises made in the party's manifesto or platform and hence disappointed many of its followers.

LABOR TAKES THE REIN.

The MacDonald ministry nevertheless did better than might have been expected under the circumstances. It was dominated by men and women who did not disdain to call themselves Socialists yet Great Britain experienced no radical departure from the capitalistic system. While the Labor ministry remained in office. This was partly due to the

ITS ACTION IN OFFICE.

The figures were as follows: Conservatives, 258; Labor, 191; Liberals, 157; Independents, 7; total 615. The representation of the Labor party in the House of Commons after each election was: 79 members in 1906; 41 in 1910; 57 in 1918; 14 in 1922; and 191 in 1923.

fact that the ministry did not control a majority in the House of Commons except by sufferance of the Liberals who were not prepared to support a radical program. But apart from this balance wheel it became clear that official responsibility has a sobering effect even upon men of socialist inclinations. Politicians always soften their intolerance when they get into power. Conservatives become less reactionary and radicals less radical. In opposition they can propound and advocate theories but in office they have to deal with realities. So the Labor party when it took the helm did not seriously endeavor to transform England into a socialist commonwealth.

A ministry in office but not in power does not satisfy anybody. This one was not satisfactory to Labor because the party did not have the votes to put its own program through parliament. It was not satisfactory to the Liberals who merely formed the tail of the Labor kite. And as for the Conservatives they did not relish the unconstructive job of merely opposing every move that the Labor ministry made. Such a situation could not long endure but the country had been through two general elections in quick succession and did not want the distraction of a third if it could be avoided. In due course it became apparent however that it could not be avoided and in 1924 the Liberals precipitated the crisis by withdrawing the support which they had been giving the ministry.

The election of 1924 was bitterly contested. The Liberals were forced into the background while Conservatives and Labor fought a pitched battle. The Conservatives in the campaign relinquished their demand for a protective tariff and made their appeal to the country by denouncing what they called the pro-Bolshevist tendencies of the Labor party as demonstrated by a treaty with Soviet Russia which the MacDonald ministry had recently negotiated. Their appeal to the fears of the propertied element and to the partisans of economic stability proved successful. Indeed the Conservatives exceeded their own expectations in 1924 by carrying more seats than the two other parties put together. The Labor party lost considerable ground but it fared better than the Liberals who now found their ranks in the House of Commons thinned to a mere handful.<sup>1</sup>

<sup>1</sup> The figures at the election of 1924 were Conservatives, 412; Labor 151; Liberals, 40; Independents 12; total 615.

The Conservatives were once more firmly in the saddle with Stanley Baldwin again at their head as prime minister. He had an ample majority in the House—a majority so large that his followers flowed over to the opposition benches whenever the green chamber was well filled. For nearly five years the new ministry held itself firmly entrenched but its achievements were of a mottled texture. Some things it did courageously and well—for example its handling of the general strike in 1926. Other things it did with gross ineptitude—for example certain of its international negotiations (such as the Geneva conference on naval disarmament) and its uninspired endeavors to solve the unemployment problem. At any rate the Baldwin ministry plodded on until the five year maximum interval between elections was almost reached then it advised a dissolution of parliament in the spring of 1929 and the election followed at once.

FIVE YEARS  
OF STANLEY  
BALDWIN

The law of the pendulum is continually in play—especially in English politics. The Conservatives in the campaign of 1929 stood on their record but the outcome was a considerable overturn. Labor gained heavily and emerged from the election with a representation in the House almost as strong as that of the Conservatives. The Liberals were swamped but they agreed to support the Labor ministry which once again took office with Ramsay MacDonald as prime minister. For the second time therefore the Labor party was in the saddle but without spurs. It was about twenty votes short of a majority in a House of over six hundred members. Hence it had the responsibility of governing the nation without possessing control of the House of Commons.

THE ELECTION  
OF 1929

#### THE NATIONAL COALITION

For two years this second Labor ministry managed to hang on however and to score some notable successes in foreign policy but in 1931 it split asunder on the issue of drastic governmental economies (including a reduction in unemployment benefits) and the imposition of new taxes as a means of balancing the budget. Thereupon a peculiar situation arose. No party could muster a majority in the House of Commons and it was very doubtful whether a general election would release the deadlock. So the king suggested a coalition of all three parties.

THE  
COALITION  
OF 1931

and is believed to have made a strong appeal in that direction to the leaders of all three.<sup>1</sup> Some critics have contended that if he did so, George V went beyond his constitutional authority. In any event a national coalition cabinet was at once formed with Ramsay MacDonald continuing as prime minister. Most of his own Labor followers thereupon deposed him as their leader but with support from the Conservatives many of the Liberals and what was left of his own group MacDonald and his national coalition managed to make a strong appeal to the country in the election campaign which immediately followed (1931).

The election campaign on this occasion marked a wide departure from the traditional British practice. On the one side were the coalition leaders representing all the Conservatives most of the Liberals and a small section of the Labor party. Arrayed against them were a few of the Liberals and most of the Laborites. The outcome was an overwhelming victory for the coalition which captured 556 seats while the opposition won only 59. In straightening out his cabinet MacDonald included eleven Conservative ministers five National Liberals and four National Labor members. The new government then set out to redeem its pre-election promises by balancing the British budget but encountered difficulties in its attempt to keep the currency on the gold standard which it was ultimately forced to abandon.

Ramsay MacDonald remained prime minister until 1935 leading a huge parliamentary majority made up of members most of whom were not of his own party. On two previous occasions he had been kept in office by the Liberals now he was prime minister by sufferance of the Conservatives. Of course this last situation was not to his liking for he had to compromise on most of his Labor principles. Eventually he stepped out ostensibly on the ground of ill health and Stanley Baldwin (who had remained leader of the overwhelming Conservative contingent in the House) took over the prime minister's office once more.

Within a few months parliament was dissolved and a general

<sup>1</sup> The whole story is not accurately known but various ideas of it may be found in Viscount Snowden *Autobiography* (2 vols. London 1934) pp. 94-95; H. J. Laski *The Crisis and the Constitution* (London 1933) ch. xiv; and by Sidney Webb entitled *What Happened in 1931* *A Record of the Proceedings of the Committee of Enquiry* (London 1933) pp. 1-17 (January-March 1933).



mentary government will keep running when there are more than two strong parties in the legislative body with no one of them controlling a majority as witness the experience of the French Republic. Nor is it at all a self-evident proposition that under certain conditions the multiple party system gives poorer results than are obtained under the straight two-party alignment. The dependence of a ministry upon several parties rather than upon a single one, forces it to seek reasonable compromises and to consider all elements in the framing of the laws. It is an axiom of political science that if government is to be safeguarded against an undue concentration of authority power must be made a check to power. Under a straight two-party system, with ministerial domination as they have it in Great Britain there is no real check to power when one party wins decisively at the polls. The ministry becomes supreme in administration in lawmaking and in finance. When it sounds the call for a vote of confidence its followers in the House will usually swallow their scruples and provide the votes. Ministerial responsibility and the two-party system when yoked together make for a firm, strong, quick acting government but the combination may readily be used to make a government too strong, too quick acting and lacking in that spirit of compromise which is the essence of a truly representative government.

Despite the surface disintegration of parties the great majority of British voters support either the Conservative or the Labor party. The Liberals during the past few years have shown no signs of quickly resuming their place as one of the major political parties in the British realm. Liberals of radical inclinations have for the most part gone over to the Labor party's ranks while those of conservative tendencies have gravitated into the party which bears that name. National Liberals are to all intents Conservatives or Liberal Conservatives is a descriptive and more designatory appellation. The present-day division in Great Britain is into two party camps although each camp contains followers who are known by different names. In essentials if not in nomenclature the two-party system has been restored—for the moment at least.

GENERAL HISTORY Strange to say there is no comprehensive history of English political parties from their origin to the present day and no comprehensive treatise which describes the English party system as such. The

nearest approaches to an adequate description are the ones given in the first volume of M. Ostrogorski's *Democracy and the Organisation of Political Parties* (revised edition 2 vols. New York 1922) and in the chapters on the subject in A. L. Lowell's *Goverment of England* (2 vols. New York 1908). A sixty page survey may be found in F. A. Ogg's *English Government and Politics* (2nd edition New York 1936) chaps. xx-xxii.

**BY PERIODS AND BY PARTIES.** For various periods however and for the individual parties there are books in abundance. Among the chief are Keith Feilsh's *History of the Tory Party 1640-1714* (London 1924) T. E. Hebble's *A History of Toryism* (London 1886) W. Harris's *History of the Radical Party in England* (London 1885) Maurice Woods's *History of the Tory Party in the Nineteenth and Eighteenth Centuries* (London 1924) F. H. O'Donnell's *History of the Irish Parliamentary Party* (2 vols. London 1910) H. Fyfe's *The British Liberal Party an Historical Sketch* (London 1928) and W. L. Bleasdale's *A Short History of the English Liberal Movement* (New York 1913).

**PARTY PROGRAMS.** On the principles and programs of the various parties there are numerous volumes (partly historical) among which may be mentioned Lord Hugh Cecil's *Conservatism* (London 1912) F. J. C. Hearnshaw's *Conservatism in England* (London 1933) G. G. Butler's *The Tory Tradition* (London 1914) Leonard T. Hobhouse's *Liberalism* (London 1911) C. F. G. Masterman's *The New Liberalism* (London 1921) Ramsay MacDonald's *A Policy for the Labour Party* (London 1920) H. Tracey's *The Book of the Labour Party* (2 vols. London 1928) R. H. Tawney's *The British Labour Movement* (New Haven 1925) H. B. Lees-Smith's *Encyclopedia of the Labour Movement* (8 vols. London 1937) and Tom Bell's *The British Communist Party A Short History* (London 1937).

On the relation of the two party system to ministerial responsibility there are discussions in G. M. Trevelyan's *The Two Party System in English Political History* (Oxford 1926) and in chap. v of Ramsay Muir's volume on *His British Government* (3rd edition London 1935) as well as in R. Bassett's *Essentials of Parliamentary Democracy* (New York 1935).

See also the references at the close of Chapter XVI.

## CHAPTER XVI

### ENGLISH POLITICAL PARTIES PROGRAMS ORGANIZATION AND METHODS

That these two parties still divid the world—  
Of those that want, and those that ha and still  
The same old sore breaks out from age to ge,  
With much the same result.—*Tennyson.*

WHAT THE  
ENGLISH  
POLITICAL  
PARTIES  
STAND FOR.

Political parties are organized and maintained to bring into actuality the things that they stand for. What do the English parties stand for? Or more accurately, what do they profess to stand for? From what geographical sections of the kingdom and from what elements of the population do they draw their principal support? What principles do they claim to uphold?

Before attempting to answer these questions it may be well to point out that the World War marked a serious break in the continuity of party evolution. For four years the parties adjourned their rivalries and presently began the practice of forming coalition governments. This practice in form or in fact has been continued ever since. Other great changes also date from the years following the close of the world conflict. Shortly after the war the Irish Nationalists departed from the House, the Liberal party went into eclipse and Labor came to the front as a major party in British politics. These departures from the old order serve to designate the war years as a point of demarcation in the evolution of the British party system. It seems desirable therefore to speak first of party structure before the war and then to mention the changes that have been wrought during the past couple of decades.

A passing word of admonition may also be advisable in connection with any discussion of party aims and principles. It is this. Nowhere are designations more apt to be misleading than in the nomenclature of political parties. We know full well that in the United States the Republicans are not a whit more republican than the Democrats and that Democrats are not necessarily more

THE  
CONFUSION OF  
PARTY DESIGNATIONS  
THROUGHOUT  
EUROPE



democratic than Republicans. To say that Republicans believe in a republican form of government while Democrats believe in democracy would be a simpleton's way of differentiating American political parties. In Great Britain before the war the Nationalists were the most democratic of all factions; in present-day Germany the National Socialists (Nazis) are the least democratic. In France the *Action L'etale* has been everything but liberal and the Radical Socialists are the least radical among all factions under the socialist banner.

So in Great Britain the Conservatives have not always been conservative nor have the Liberals always been liberal in their attitude toward public questions. The Conservatives have sometimes championed reforms with the Liberals opposing them. Within the ranks of both these parties there have always been many shades of opinion. In general of course men and women who are conservative in temperament incline toward the Conservative party and people of liberal views have traditionally gravitated into the ranks of Liberalism and of Labor but the exceptions to this tendency run into the millions. Generalizations as to what a party stands for are virtually impossible to make—if one has a care for accuracy. Usually a political party stands first of all for getting itself into office and keeping itself there. It stands for itself and its friends. It may stand for one thing in opposition and for something quite different when in power. Thus it comes to pass that although there may seem to be a good deal of difference between the respective programs of the ins and the outs there are seldom any drastic reversals of policy when the one party gives way to the other.

### THE CONSERVATIVES

There have been times when the Conservative party has justified its name but no one with a knowledge of English political history would contend that it has always been the party of reaction or of obstruction to progress. Under the leadership of Peel and Disraeli it was militantly progressive like the two major American parties under the leadership of the two Roosevelts. If you make a list of the various reform acts which parliament has passed during the past eighty years you will find that a very substantial fraction of them were introduced by Conservative ministers. The Con-

LIBERALS AND  
CONSERVATIVES

CONSERVATIVES  
ON TIMES  
REFORMERS

servatives are reformers, asserts one of their leaders, but cautious and circumspect reformers" 1

The personnel of the Conservative party almost inevitably compels it to be cautious and circumspect. Both before and since the war it has included in its membership most of the nobility and the country squires, most clergymen of the Established Church (the parsonage, as it is called) and many ardent churchmen among the laity. It has always been strong in rural England, especially in the southern counties. It has held in its ranks most of the barristers (lawyers), the bankers, the business imperialists, the world-exploiters, and the militarists. Likewise it has drawn heavily upon the prosperous merchant class.

Most university graduates, moreover, have gone into the Conservative ranks. From 1885 to 1918 not a single Liberal member was elected to the House of Commons from any of the British universities. This does not mean, of course, that a university education tends to take the liberalism out of a young man, whether in England or elsewhere. It is merely that the British universities before the war drew their students, for the most part, from homes which were traditionally Conservative in their political allegiance. It also means, perhaps, that university graduates are likely to go into a social environment where the atmosphere is Conservative, and to become influenced by it. At any rate it has sometimes been remarked that many Oxford and Cambridge men who join the Labor party or the Liberal party as undergraduates drift into the Conservative ranks when they grow older and acquire social prominence. The fact seems to be that a university man's political leanings are not determined by the enlightenment (if any) which he derives from the curriculum but are largely influenced by two things, namely the political affiliation of his parents and the position in life which he acquires after graduation.

The Conservative party has also made a strong appeal to the American politicians designate as the interests, that is, the industrial corporations, the big income taxpayers, and the liquor trade or the beerate, as this interest is jocularly called. It has also acquired some hold on the middle class, including the small manufacturers, tradesmen, and shopkeepers, although these classes were mainly mobilized in the

ranks of Liberalism during the nineteenth century. This term middle class by the way although it figures on almost every page of political discussion in England does not lend itself to precise definition. One writer has defined it as that portion of the community to which money is the primary condition and the primary instrument of life.<sup>1</sup> Whatever else may be said about this definition it has at least the merit of indefiniteness. Applied to the United States it would not leave much of the population outside its scope. Finally until the rise of the Labor party the Conservatives drew into their ranks a large number of mechanics ordinary wage earners in the cities and agricultural laborers in the rural districts. Even yet they have managed to hold a considerable element among the wage-earners as the size of their vote at each general election evidences. In general therefore the Conservative party draws from all elements in the British electorate but its strength lies in the upper ranks of the social and economic scale rather than in the lower.

#### THE LIBERALS

Traditionally the Liberals have been the party of reform free trade and laissez faire. It still professes to believe in free trade but it has long since discarded its allegiance to the policy of let alone. Liberals no longer incline to the old view of free competition will work out a remedy for a nation's ills. They no longer shun laws of an avowedly paternalistic character as in earlier days. They are willing to leave commerce alone but not industry. They do not balk at protecting the worker by a minimum wage and social insurance. What there is left of them believes in individualism for the rich and in collectivism for the poor. This is one of the main reasons for the decline of the Liberal party since the war. Economic and social problems of great urgency have arisen in England since 1918 and the Liberals have had no straightforward consistent program to present. They have tried to stand in the middle of the road and in times like these there is hardly any place for such a party.

The membership of the Liberal party before the war was drawn from a wide range. It included a substantial proportion of the professional and business classes (though not a majority of them).

<sup>1</sup> R. H. Gtotton *The English Middle Class* (London, 1917) p. 8.

the bulk of the small shopkeepers and tradesmen in the towns, a fair sprinkling of voters in the agricultural regions of the kingdom, and a large following among the urban workers. These workers during the past twenty years, have been largely abducted into the two other parties. Liberalism moreover has always made a special appeal to the Nonconformists—that is to clergymen and the more devout lay religionists who are not affiliated with the Established Church

### THE LABOR PARTY

The backbone of the Labor party's strength is the trade union membership. The party includes in its ranks most of the unionized workers of Great Britain. It has also absorbed virtually the whole socialist vote although the allegiance of some modern socialists to the Labor party has become less dependable than it used to be. Labor's main numerical strength thus comes from the lower social and economic strata. But its leadership and its intellectual strength come to some extent from higher up. The Labor party has made a considerable draft upon professional men, scholars, government employees, even capitalists and peers. Its appeal to the new enfranchised women voters, and more especially to the emotional section of this electorate, has been surprisingly strong. It also draws heavily from the membership of the cooperative societies and organizations. Since the split in 1901 the party has veered more strongly towards socialism. It has definitely and finally rejected the policy of gradualism or economic reconstruction by degrees, which it essayed to follow under MacDonald's leadership and is now pledged to a direct assault upon the foundations of economic power.<sup>1</sup>

In Great Britain as in the United States party allegiance is to some extent a matter of geography. Before the war Scotland and Wales usually went Liberal. Today the Labor party has acquired great strength in the industrial areas of both these countries. The north of Ireland (Ulster) has always been staunchly Conservative or Unionist as it still prefers to be called. In England itself there are areas with strongly Conservative tendencies and others just as consistently Labor. In a

<sup>1</sup> H. J. Laski, *Democracy* (Chapel Hill, N. C. 1933) p. 38

general way the north of England and the midlands have inclined against Conservatism while the south and east have been its traditional strongholds. One cannot say however that there is a solid south in Britain as there is in the United States. Areas in which mining and manufacturing employ large bodies of workers usually support the Labor party while on the other hand in the fertile agricultural regions the Conservatives regularly have the advantage.

Now the foregoing paragraphs will mislead the reader if he insists on construing them too literally. For there is hardly a single rule of British party politics that is not open to some important qualifications. Tell me how a man earns his living and I will tell you how he votes is a stock saying among English politicians but like many unstitched aphorisms of practical politics it seems to have no firm basis in fact. Neither the Conservatives the Laborites nor the Liberals have had a monopoly of all the voters in any walk of life. It must not be taken for granted that because a man is a peer or a bishop or a banker he is necessarily a Conservative. There are peers bishops and bankers quite a number of prominent ones in the ranks of the Labor party. On the other hand you will encounter plenty of Conservatives in overalls with dinner pails in their hands.

THE DANGER  
OF GENERAL-  
IZING  
OUR PARTY  
THEORIES.

A political party like an old time army is made up of regulars auxiliaries volunteers mercenaries and camp followers. All but the regulars are liable to desert, in whole or in part, on occasions. The percentage of these regulars in the party strength is not so large in Britain as in the United States. The chief reason for this is the fact that in Great Britain the general elections do not usually turn on moral commonplaces but on fairly concrete and definite proposals. This is a consequence of the British scheme of ministerial responsibility which causes a general election to synchronize with the clash of political parties on some outstanding issue. In the United States when the time for a general election arrives at some times happens that there is no major issue engaging the public attention. The party leaders then have to rustle around and find one.

REGULARS  
AND  
REGULARS IN  
THE PARTY  
RANKS.

In England this is not what happens or at any rate it happens

A map by E. Krehbiel printed in the *Geographical Review* for December 1916, shows the distribution of party strength prior to the World War.

but rarely For in England it is the issue that usually brings on the election Until parliament has run its full five year term there is no general election unless some great controversy arises and makes an election necessary to settle it When such an issue arises however there may be three general elections in three years as was the case during 1922-1924 As a result of this difference the party lines are less firmly drawn in Great Britain than they usually have been in America The way an Englishman votes is to a large extent determined by his own attitude toward the immediate issue which has made the election necessary Party allegiance does not count for as much in Hampshire as it does in New Hampshire This is shown by the huge over-  
turns which take place at English elections even within a very short space of time At the election of 1923 for example the Conservatives polled five and a half million votes at the election of 1924 they obtained nearly eight million

Between the three English parties today there is a general agreement on certain fundamentals All three favor the continuance of the monarchy Alike they have accepted the British commonwealth of nations as an aggregation to be defended preserved and more closely welded together There was a time when it could be fairly said that the Conservatives were more imperialistic than either the Liberals or the Laborites more belligerent in their foreign policy and more ardent in extending the far flung range of British power This was notably the case during the Disraeli Gladstone duel of sixty years ago But if there is now any real difference in foreign and colonial policy between the parties it is not discernible to the naked eye Issues of foreign and colonial policy have tended to become non partisan The great objectives remain much the same no matter which party is in power

This consensus has been shown during the years that have intervened since the World War During this interval Britain has had three coalition ministries besides three Conservative and two Labor ministries But the main currents of British foreign and colonial policy have undergone no substantial change Before the advent of the first Labor ministry it was freely predicted that a Labor government would make a mess of diplomacy alienate the dominions and lower British prestige everywhere Nothing of the sort hap-

LOOS-NESS OF  
PARTY LINES  
IN BRITAIN

ALL BRITISH  
PARTIES  
AGREE ON THE  
MAIN  
PRINCIPLES  
OF FOREIGN  
AND COLONIAL  
POLICY

posed. One reason is that the great body of permanent officials in the foreign office the India office and in the offices for the dominions and colonies carry on, no matter what ministry is in power. New ministers when they come into office can deflect the course of policy somewhat but sharp reversals and radical returns are normally out of the question. All three British parties have supported the League of Nations but the Labor party has probably been the most sincere in this direction. It has opposed large armaments as a matter of principle but in recent years has had to conform to the logic of necessity.

For many years the question of Irish home rule unctured every British election campaign with animosity and bitterness. But all parties have now accepted the Irish Treaty and are pledged to carry out England's part of it. For the moment this conflict of the British political conscience has assumed the form of a rumbling volcano

THE IRISH  
ISSUE IS  
CLOSED FOR  
THE MOMENT

which may, at any time burst into skyward flames again,—on the issue of forcing Northern Ireland (Ulster) into a union with the south. Strongbow settled this Irish question eight hundred years ago or thought he did. Oliver Cromwell also solved the problem to his own satisfaction and so did the younger Pitt. Gladstone spent a considerable part of his public life trying to put it out of the way but never succeeded. Then the resourceful Lloyd George tried his hand at it, and brought the Irish Free State into being but whether this will prove a final settlement is by no means certain. For Dublin now demands a united Ireland including Ulster and it is unlikely that Great Britain would willingly permit the forcible absorption of this northern area.

With a consensus on foreign and colonial policy, and a subsidence of Irish turmoil for the moment, the lines of cleavage between Conservatism, Liberalism, and Labor are mainly related to domestic problems. The Conservatives due to the make up of their party are naturally more favorable to the interests of the peerage and the Established Church, while both the Liberals and Laborites are more susceptible to middle-class trade union, and Nonconformist influences. This divergence usually shows itself when matters affecting education come before parliament. The Conservatives have a marked friendliness toward the church schools which play a large part in the education of the English youth, and have

PARTY  
DIFFERENCES  
TODAY

1. ON  
RELIGIOUS  
ISSUES

steadily urged that these schools be generously assisted from the public funds. Both the Liberals and the Labor party while not insisting that public money shall be entirely withheld from private schools have been more actively interested in the upbuilding of what Americans call the public school system.<sup>1</sup> They have also been more friendly to vocational and technical education. The Labor party has been especially active in this direction.

In the matter of tariff policy there is still a good deal of free trade sentiment among members of the Labor party and among left wing Liberals but under a coalition of Conservatives National Liberals and National Laborites the country has gone protectionist. After the election of 1901 parliament established a tariff. With free trade abandoned in all other countries of the world and even in the British dominions it was felt that Britain could no longer continue as a dumping ground for foreign products of every sort.

It is difficult to delineate with any degree of clearness the attitude of the British political parties upon the various issues of economic and social reconstruction which have been forcing their way to the front in recent years. This is because the parties are not homogeneous stabilized bodies. The Conservative party includes in its membership a strong infusion of reactionaries or die hards, but it also shelters a larger and steadily growing element of voters who are both progressive and socially minded. The Labor party contains within its ranks all shades of radical opinion—trade unionists socialists Catholic workingmen who are not socialists pacifists and even revolutionaries. There is often more in common between a left wing Conservative and a right wing Laborite than there is between either of them and the extremists of their own party. But in general the Conservatives and their allies of the national coalition believe that social and economic reconstruction can be and should be accomplished within the existing framework of parliamentary government private enterprise (with government regulation) and private property. The coalition government of Great Britain during the past few years has carried through measures which represent

A word of warning as to nomenclature should be added here. The term public schools as used in England refers to privately owned and privately managed schools such as Eton Rugby and Harrow. Schools which correspond to the public schools of the United States are now known as provided elementary schools. Formerly they were called board schools.

2 ON FISCAL  
QUESTIONS.

3 ON SOCIAL  
A. D.  
E. O. O. NO  
RECONSTRUCTION



a new deal quite comparable to that of the Roosevelt regime in the United States

The British Labor party on the other hand is pledged to the establishment of a socialist commonwealth in Great Britain. Its program calls for a much more radical reconstruction of the social and economic order than either of the other parties have contemplated. Moreover it plans to effect this reconstruction rapidly and not by any process of gradualism as the right wing element of the party had proposed in earlier days. While expecting to establish a socialist state by non violent methods the spokesmen for the Labor party have made it plain that there will be no compromise with capitalism in achieving the end.<sup>1</sup> More specifically it is proposed that if the Labor party obtains a majority in the House of Commons the government shall at once proceed to take over into public ownership all the basic or key industries and services. These include agriculture coal iron and steel water resources electric light and power railroads and other means of transport together with the national enterprise banking and credit facilities. All such enterprises under government control would each be managed by a board or commission which in time would be responsible to a member of the cabinet. The Labor program also proposes that as regards any industries or services which are not at once taken over into public ownership there shall be legislation to afford the workers a larger share in management. It is also proposed to elaborate the existing system of social security (old age pensions unemployment insurance health insurance etc.) as well as to undertake a comprehensive rehousing of the workers thus abolishing the slum areas which still exist in many of the English industrial communities. An expanded public works program financed by the national government is pledged. Finally it is proposed to raise the age of compulsory school attendance to sixteen years and make education absolutely free up to this age.

The program of the Labor party while it proposes the nationalization of key industries and services does not contemplate that this shall be done by confiscating private property. Compensation would be given. This presumably would involve a large issue of government bonds. There is a Communist party in Great Britain and in

<sup>1</sup> G. D. H. Cole, *A Plea for Britain* (London 1933); H. J. Laski, *Democracy in the 20th Century* (London 1934) and the official publication entitled *For Socialism and Peace* issued under the party's sponsorship in 1934.

orthodox fashion it advocates a dictatorship of the proletariat, with outright confiscation of all private property but its membership is not large and because of its Russian affiliations it is viewed with distrust even by the Laborites. There is also in Great Britain a Fascist party or Union of Fascists as it is called with Sir Oswald Moseley as its leader.<sup>1</sup> For a time it grew rapidly in membership but during the past few years has lost ground. British fascism, in its expanding days drew from all parties but chiefly from the unemployed in Labor's ranks.

### ORGANIZATION AND ACTIVITIES

The history, composition and programs of the three major political parties in England having been briefly surveyed it is worth while to add a word concerning their methods of organization and their activities in election campaigns. English political parties place a good deal of stress upon organization although by no means so much as is the custom in America. Comparing England and America in this respect one might say that in England leadership counts for more and organization for less than in the United States.

English party organization in the country at large as distinguished from party organization in parliament dates from the morrow of the Great Reform Act. Prior to 1832 when the privilege of voting was confined to a very small percentage of the people when the process of electing a member was so often a mere gesture there was no need for party organizations among the voters. With the widening of the suffrage however and the elimination of the pocket boroughs it became apparent to the political leaders that success or failure at the polls depended on getting the new voters registered and canvassed. So registration societies were formed all over the kingdom and these gradually developed into full fledged local party organizations. At the outset the local organizations did not attempt save in rare instances to place candidates in nomination. This was left to individual initiative in other words the candidates came forward of their own volition or were nominated by a few influential members of the party.

In the course of time however the local organizations began to

broaden their bounds so as to include all members of the party in the ward or borough or county. This step was first taken by the Liberals in Birmingham during the sixties. There the Liberals of each ward adopted the practice of assembling in caucus and choosing a ward committee which in time sent delegates to a central association for the whole city. The general committee of this central association representing as it did the whole body of Liberal voters in Birmingham took over the function of dominating the Liberal candidates and promoting their election. In short the Birmingham Liberals merely adopted the ward caucus and the city convention thus taking a leaf from the book of practical politics in America.

THE  
BIRMINGHAM  
PLAN

The Birmingham plan of party organization proved to be a brilliant success. The Liberals organized on the American plan not only swept their entire slate of three candidates into the House of Commons but captured the city council as well. Naturally this achievement was noted by the Liberals in other cities and by their Conservative opponents also. Before long therefore the Birmingham plan spread over most of England. It did not do this without opposition however for many timid minded leaders in both parties were afraid that it would transplant to Great Britain all the evils of American machine politics. In this they proved to be mistaken. The use of the caucus and convention in England did not result in the domination of the cities by rings and bosses. Anyhow when the Liberals adopted this method of organization they left the Conservatives no choice but to accept it also as a matter of self defense.

ITS  
READ

The next step followed logically within a short time. This was the affiliation of the local organizations into a national body. One party organized the National Conservative Union and the other the National Liberal Federation. It was not intended that these national bodies should exercise any control over the local associations or dictate the nominations made by the latter. The avowed purpose was to guide assist and inspire the local organizations so that

THE NATIONAL  
CONSERVATIVE  
UNION AND  
THE NATIONAL  
LIBERAL  
FEDERATION

The moving spirit in this process was Joseph Chamberlain who was commonly known as the 'American mayor' of Birmingham by reason of his having made this financial center of influence and authority. Chamberlain was crisscrossed with America partly regarding its methods having spent considerable time in the United States. His son, Neville Chamberlain, is now prime minister of Great Britain.

their work might be made more effective. But both national bodies inevitably became directing factors in the work of their respective parties. Each set up a central office with a paid staff and these headquarters kept in close touch with the local associations everywhere. Sets of rules and instructions were prepared for the guidance of the local committees and the local associations were sometimes provided with paid organizers. On the approach of an election campaign the central offices took over the work of raising funds for nation wide use; they supplied speakers where they were most needed; they even adopted the practice of recommending a candidate in any constituency where no strong local man appeared to be available.

This habit of 'recommending' an outsider (usually some one who had worked for the national headquarters in a previous campaign) was not resented by the local organizations. On the contrary they often asked that a good candidate be recommended to them—preferably one able to conduct a whirlwind campaign and pay for it out of his own pocket. The practice still continues in Great

Britain and not a few parliamentarians have made their way into the House of Commons during the past fifty years by grace of a central recommendation to some fighting chance constituency in which no local man seemed willing to give battle for the party and pay the price. By this and other means at any rate the influence of the central organizations continued to grow apace and eventually two small groups of party leaders in London were exerting a strong influence upon the work of the local associations everywhere.

Strictly speaking the supreme authority in the Conservative party is the Conservative Conference which is composed of delegates from the local organizations. The Liberals and the Labor party each hold similar national conferences.<sup>1</sup> Unlike the national party conventions in the United States these British national party conferences meet every year (not once in four years) and they neither nominate candidates nor adopt platforms. Their main purpose is to elect certain party officials and committees to provide an opportunity for key note speeches and to promote party morale. The leader of each party is chosen by the party members in the House of Commons not by the conference.

The Liberals however all the annual conference. The schism in the ranks has also led to changes in organization and methods.

Everywhere and always there is a good deal of sham in the make up of party organizations. This is about equally true of England and the United States. Ostensibly in both countries the local committees are chosen by the voters of the party, every voter having a voice in the matter. Ostensibly also the party leaders are chosen by the committees and are responsible to them. But the fact is that in both countries under normal conditions party committees are self-chosen, self-perpetuating and not really responsible to anyone. The voters in nine cases out of ten merely assent to what has been put out and dried for them by the party leaders. The chief difference between British and American procedure (in the case of local committees) is that in the one case this assent is given at a caucus while in the other it is usually given at a primary.<sup>1</sup>

DIFFERENCE  
BETWEEN THE  
THEORY AND  
PRACTICE OF  
PARTY OR-  
GANIZATION

The Labor party, since its reconstruction some years ago, does not differ greatly in organization from the two older groups. In most of the constituencies (although not in all of them) there is a Labor association in which all producers by hand or brain are eligible to membership. They become members on payment of a small annual fee. These associations select the Labor candidate in each constituency. There is, as has been said, a national Labor conference which meets every year. The Labor party likewise maintains a national executive (which is elected by the conference) and a central office in London. From this office the national executive directs the party activities throughout the country. It recommends candidates like the other parties, provides speakers, apportions funds, distributes campaign literature, helps to support the party newspapers, and does most of the work that is performed by a national party headquarters in the United States during a presidential campaign. All in all the British Labor party is well organized—better perhaps than either of the older parties.

ORGANIZA-  
TION OF THE  
LABOR PARTY

Much work in the interest of all the parties is performed by auxiliary organizations. The *Primrose League*, for example, is an active propagandist body in the interest of the Conservative party.<sup>2</sup> So is

A caucus is a meeting in which the party voters all come together at the same time. A primary is as its name implies a preliminary election in which the party voters come to the polls singly, not en masse. A caucus discusses and votes a primary, affording an opportunity for discussion.

This league is named in honor of the Conservative leader Disraeli, whose favorite flower was the primrose.

method of raising campaign funds. It has not depended for sustenance upon a few rich men but has combed the party ranks for small contributions.

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In addition to the books listed at the close of Chapter XV mention should be made of R. S. Watson, *The National Liberal Federation* (London, 1907) W. Elliott, *The Growth of the Tariff Reform Society* (London 1927) J. M. Gaus, *Civil Britain: A Study in Civic Loyalty* (Chicago 1929) especially chap. 1 Edward Pease, *History of the Fabian Society* (2nd edition London 1925) H. Tracey, *The Birth of the Labour Party* (2 vols London 1925) and C. J. H. Hayes, *British Social Politics* (New York, 1913).

Party methods and activities are also discussed more or less in J. A. Spender, *The Public Life* (2 vols London, 1927) E. Penn, *If I Were Labour Leader* (London, 1926) P. G. Cambridge, *The Growth of Politics* (London, 1932) Frank Gray, *The Confessions of a Conservative* (London, 1925) Michael Farberman, editor, *Political Britain: Parties, Politics and Politicians* (London 1929) F. S. Oliver, *Political Parties* (London, 1934) E. R. Pike, *Political Parties and Policies* (London, 1934) Georg Lammert, *Leadership in the Commonwealth* (London 1935) Sir Austen Chamberlain, *Reflections on the Inside* (New Haven, 1937) C. S. Emdin, *The Party and the Constituency* (Oxford, 1933) J. K. P. Joca, *My Party and Politics* (New York, 1932) together with such manuals as *The Liberal Party* (London, 1934) and *Fabian Socialism and Policy* (London 1934).

A great deal of scattered but ever illuminating material on party organization and methods may be found in the biographies of such leading British statesmen as Disraeli, Gladstone, Salisbury, Bismarck, Lord Roebuck, Campbell Bannerman, Lord Randolph Churchill, Joseph Chamberlain, Balfour, Asquith, Lord Curzon, Lloyd George, Baldwin and MacDonald.

## CHAPTER XVII

### LAW AND THE COURTS

Justice is the end of government. It is the end of civil society. It ever has been and will be pursued until it is obtained or until liberty is lost in the pursuit.—*James Madison*

In the history of mankind there have been many systems of law but only two have proved to be great and outstanding namely the civil law of Rome and the common law of England. Other systems have come into existence during the centuries and some of them (such as Mohammedan law) remain in operation today but it is not too much to say that the legal fabric of practically the whole civilized world is derived from one or the other of these two great bodies of jurisprudence. The countries of Continental Europe the Latin American republics South Africa Japan and even Scotland have followed the civil law of Rome while England Ireland the United States and the British overseas dominions have based their legal systems upon the common law<sup>1</sup>. Thus one can travel over most of the world today without setting foot upon soil that does not render homage to the jurisprudence of England or of Rome. Roman and Saxon differed in many things but one thing they had in common a genius for government and law. *Regere imperio populos pacisque imponere morem*<sup>2</sup>.

These two great systems of law Roman and Common are absolutely unlike as anyone who undertakes a study of them will soon discover. The Roman law was developed by a people who although a very peace-loving race went had a strong penchant for order symmetry

<sup>1</sup> In French Canada there is strong infusion of Roman law and the same is true of Louisiana which was influenced by the French. There is a good chapter on 'The Spread of Roman and English Law throughout the World' in Lord Bryce's *Study of History and Jurisprudence* (London, 1901). See also 'A Map of the World Law' by John H. Wigmore printed in the *Geographical Review* January 1929.

To rule the people with authority and to teach men the way of peace. *Virgil Aeneid Book VI 847*

and uniformity. So they developed a legal system which was as above all things coherent and orderly each part consistent with every other part. The mediaeval Englishman was also endowed with a practical turn of mind but he inclined much less to logic or consistency. He left his legal system full of knots and kinks and loopholes or as lawyers would say replete with anomalies and incongruities. The Roman legal system is polished, balanced rounded and immobile while the common law is still rough at the edges devious casual, and ever changing like the colors of an English sunset.

In a way therefore these two systems of law are an elaboration of the words *order* and *progress* which prefigure two types of national genius. It has sometimes been said that Roman law is like Romanesque architecture in that its impressiveness arises from the proportions of the mass while the common law is like Gothic architecture its beauty arising from the variety and perfection of the details. Whether this simile is worth much I cannot say nor are there many who can, for few men are proficient in both architecture and law. But as to the variety and intricacy of detail in the common law any American lawyer can testify. Therein lies its strength—also its exasperation. In other words the common law is not a code like the laws of Solon or the Twelve Tables but an organism every molecule of which is undergoing ceaseless decay renewal or alteration.

ORDER AND  
PROGRESS

What is this common law about which Blackstone wrote in rhapsody as *the best birthright, the noblest inheritance of mankind*? What is the basis of the old saying that common law is common sense? In 1774 the First Continental Congress meeting in Philadelphia, asserted that Americans were entitled to their common law by the immutable laws of nature. Why did these sturdy colonials on the verge of a revolt against England, lay claim to such a heritage? The answer however brief it be must carry us a long way back into English legal history.

THE COMMON  
LAW OF  
ENGLAND

Even prior to the Norman conquest in 1066 certain legal customs and usages had become *common* to the whole realm of England, or at any rate to a large part of it. But these unwritten usages were relatively few in number and they were not always clear. From time to time therefore they were elucidated or declared by the dooms or ordinances

ITS ORIGIN  
AND EARLY  
GROWTH



which the king issued at sessions of his Witan. With the arrival of the Normans and the strengthening of the royal authority these nation wide or common usages steadily increased until in time they became both numerous and complicated. When a case came before the royal justices these judges tried to ascertain the common custom and to apply it. The decision of one judge was then followed by others because that was the easiest thing to do and in this way precedents and the doctrine of *stare decisis* (let the rule stand) were evolved. Thus there grew up especially under the early Plantagenet kings a body of rules which had never been ordained by any monarch or enacted by any legislative body but which merely represented the crystallization of usages or customs. Nevertheless they were applied with the force of law by the king's judges wherever they went.<sup>1</sup>

Then came the next step. Commentators began to take this steadily growing and somewhat elusive body of rules in hand

THE COM  
MENTATORS  
GLANVIL TO  
BLACKSTONE.  
They arranged them in logical form, elucidated them, added their own comments and thus gave the common law a better basis for further development.

Ranulf Glanvil was the first of these common law expounders. In the twelfth century he compiled his famous *Treatise de Legibus et Consuetudinibus Regni Angliæ*<sup>2</sup> a remarkable treatise when one takes into account the difficulties which this pioneer compiler had to overcome. Other jurists continued Glanvil's work. Bracton about the middle of the thirteenth century edited a larger commentary with numerous citations from the decisions of the royal courts. Then as the centuries passed came Littleton Fitzherbert, Hale, Coke (pronounced Cook) and finally the best known of them all Sir William Blackstone whose *Commentaries on the Laws of England* appeared on the eve of the American Revolution.<sup>3</sup>

These men were expounders not makers of the law. They ex

See Sir Frederick Pollock's *Expansion of the Common Law* (London, 1904) pp. 46-50 also F. W. Maitland and F. C. Maitland *Sketch of English Legal History* (New York, 1915) Ed. and J. N. S. *A Short History of English Law from Earliest Times to 1933* (London 1934) and Harold P. Lasker *Historical Introduction to English Law and its Institutions* (London 1932).

It is the belief of some authorities that the *Treatise* was not entirely the work of Glanvil but partly that of his nephew Hubert Walter.

During the past hundred and fifty years the *Commentaries* have passed through numberless editions. No other law book is so widely known throughout the English speaking world.

plained the law as it was at the time of writing. Meanwhile the common law kept broadening down from precedent to precedent. It grew by decision and by record, not by enactment. Year after year the decisions of the courts fitted it to new needs and conditions. But it ceased to be *unwritten* law in a strict sense for its rules and usages as they grew were put into written form by the succession of jurists named above. It was unwritten law only in the sense that it did not originate in statutes passed by parliament. It was customary law in that usages supplied its basis. It was judge-made law in that the courts had evolved most of it.

COMMON LAW  
IS JUDGE-MADE  
LAW

Age gives dignity to law as to institutions. The people of England gloried in their common law; they regarded it as a shield and buckler against the royal oppression which in truth it was.

For had it not been the people's law so far back that the memory of man runneth not to the contrary?

ITS MIGRATION  
TO AMERICA

So when Englishmen migrated to America in the seventeenth century they brought the common law with them just as they brought the English language. To the colonist it was the basis of his personal liberties, a body of fundamental law which could not be changed at the caprice of kings or parliaments.<sup>1</sup> Hence the colonist guarded it as jealously as his flag, and it was the first system of law applied by his courts in the new world. Gaining good root beyond the seas, it survived the Revolution, and in forty-seven states of the Union the courts are administering it today. What an astonishing survival! Take for example the rule that a father is under legal obligation to provide his minor children with the necessities of life. When and by whom was that rule ordained? It was never ordained at any time or by anybody. It goes back to the primitive customs of the Saxon tribes.

During the past eight or nine hundred years, however, another form of law has been encroaching on the common law—slowly at first but of late more rapidly. This is statute law, or law enacted by a regular lawmaking body. In Norman and Plantagenet England, as the earlier chapters of this book have already pointed out, the king made laws first in his Great Council and later in parliament. And parliament became in time the dominant factor in making the statutes of the realm. Today, therefore, parliament can change any rule of the common

ITS RELATION  
TO STATUTORY  
LAW

<sup>1</sup> See chapter on 'The Fundamental Law' in C. H. McIlwain's *High Court of Parliament* (New Haven, 1910).

law at discretion and it does make some changes at almost every session. Year by year statutes are passed by parliament to cover things which the common law has failed to cover or to clarify its provisions or to codify them or to enlarge them or to vary them, or to repeal certain of them altogether establishing different rules or principles in their stead. When the common law conflicts with a statute the statute always prevails. Hence as statutes multiply the common law is cut into more and more deeply.

Nevertheless the civil (as distinguished from criminal) law which the courts of England administer at the present time is for the most

part common law. The statutes numerous though they are cover a relatively small portion of the entire field.<sup>1</sup> They have dealt mostly with administrative matters and machinery. Many statutes would have

no meaning were it not for the common law. This is because most of the underlying rules relating to the rights of the individual are based on common law principles—such for example as the principle that men are under legal obligation to pay their debts to refrain from injuring the property of others to fulfill their contracts to support their families to seek redress in the courts and not by their own direct action to keep the peace and to be presumed innocent until proved guilty.

Whence arose the rule that jurymen should be chosen by lot that there should be twelve jurors and that they should reach their verdict in secret? By whom was it enacted that hearsay is not evidence that a man must not be compelled to incriminate himself and that an accused shall be given the name of his accuser? These things did not originate in any constitution charter or bill of rights. Where was it first decreed that the citizen cannot sue the state without its own consent? Or that a government official who commits an offense even in his official capacity is amenable to the ordinary courts? You will search in vain through the acts of parliament for the origin of any of these legal principles or for a hundred other fundamental ones which every Englishman and American now accept as self-evident necessities but which are the very things which differentiate Anglo-American jurisprudence from that of Continental European countries.

The same is true of the United States although hardly to a like extent. Some states have cut more deeply into the common law than others. In American law schools at least two thirds of the instruction is devoted to the common law and only a third (or less) to statutory law and equity.

The purpose of law is to promote justice. And justice, as James Madison once said, is the end of government. Law is merely a body of rules whose aim is the systematic and regular attainment of that end. But to fulfill its high purpose the law must keep step with social and economic progress—which often it does not. The great merit of the common law is that it represents the survival of the fittest among the various legal rules which successive generations of men have tried. Having stood the test of time and proved itself suited to the needs of the modern community, the common law might well be regarded as a fairly true embodiment of justice. But people are often impatient with things that are old, and want things that are new—in law as in everything else. So parliaments and legislatures are importuned to set aside various rules of the common law, replacing them by statutory provisions. And the new statutes often serve the ends of justice less acceptably.

COMMON LAW  
AND COMMON  
SENSE

### EQUITY JURISPRUDENCE

Then there is equity. The courts of England administer in addition to the rules of common and statute law a third branch of jurisprudence known as the rules of chancery or equity. These terms convey a very vague and often a misleading impression to the undergraduate's mind. He reads in the newspapers that an estate is 'tied up in chancery' or that somebody has 'won his case in equity' and both intimations are as Sansarrit to him. Perhaps he has a guess that chancery has something to do with chance, and that equity is derived from *equus*, a horse. But chancery and equity are synonymous terms; they refer to a collateral branch of jurisprudence which runs parallel with the common law and the statutes, with rules administered by the courts in much the same way. The rules of equity are not necessarily more equitable than the rules of common and statute law. Law and equity are alike designed to promote justice, but in somewhat different fields and by different methods of procedure.

CHANCERY OR  
EQUITY

To understand what is meant by chancery or equity jurisdiction, one must know something about origins, and these go back to early Plantagenet, perhaps even to Norman times. The embryo of modern equity is to be found in the mediaeval legal doctrine that the king could do no wrong, being the source of law and justice. As the legal sovereign might miti-

THE ORIGIN  
OF CHANCERY

gate the rigor of the law in the interest of justice. So whenever it appeared to a suitor in the regular courts that the strict administration of the common law would fail to give him justice, he could petition the king for intervention. He could ask the king to give him some redress that could not be had by bringing a lawsuit.

At first these petitions for royal intervention dealt mainly with situations which the common law did not cover or covered inadequately and in which the judges could find no way of redressing an obvious wrong. Or on occasions the king was petitioned to redress a miscarriage of justice which resulted from a technicality or an accident or an error in the application of the law. At the outset such requests came to the king infrequently, but as time went on they began to pour in by the hundreds. Naturally so for when it became noised abroad that the king would intervene to forestall or redress injustice there were many persons with real or fancied grievances who sought his intervention.

In the beginning moreover the king tried to deal with each petition on its merits, giving the matter his personal attention and sometimes discussing it with his council. But he soon found that if he kept on doing this he would have time for nothing else. So he hit upon the expedient of doing the work by proxy, in other words the plan of referring all such petitions to his chancellor or principal secretary.<sup>1</sup> The chancellor in these days, was invariably a bishop or other high churchman and hence might be presumed to have sound ideas as to what constituted justice between man and man. He was commonly referred to as 'the keeper of the king's conscience'. But even the chancellor eventually found himself overwhelmed with petitions and in time it became necessary to appoint 'masters in chancery' to assist him in his work. Thus there gradually evolved a regular court which came to be known as the court of chancery.

Now every petition presented to the court of chancery was originally supposed to be dealt with on its own individual merits.

And so long as petitions were relatively few it was practicable to deal with them in this way. But with the great increase in its business the court of chancery found itself compelled to set up some general rules.

No tribunal when it has a large number of cases to adjudicate can decide each of them on its own merits without refer

<sup>1</sup> The date commonly given for this transfer is 1280.

ITS EARLY  
GROWTH

ITS EVOLUTION  
INTO A  
BRANCH OF  
JURISPRU-  
DENCE

ence to other cases. Sooner or later it finds that the merits of many cases are substantially alike and hence that they must be decided in the same way otherwise gross injustice would be done. Every court no matter what its jurisdiction inevitably creates a body of precedents which are virtually binding upon itself. So it was with the court of chancery. Precedents traditions maxims rules and exceptions were evolved one by one until England found herself endowed with that elaborate and intricate branch of jurisprudence which is now known as equity.

By the close of the middle ages therefore three branches of jurisprudence had been marked out in England—common law statute law and equity. All of it was the law of the land all of it had its source in the authority of the king. Common law was the usage of the realm as declared by the king's courts statute law was the work of the king in parliament equity was the outgrowth of the king's position as the fountain of justice above the law.

THE THREE  
ARMS OF THE  
LAW

Its procedure however a distinction between law and equity had grown up because the court of chancery did not follow the usage of the law courts but developed a different system of its own. Incidentally it began encroaching upon the law courts claiming the right to issue injunction against persons who tried to seek remedies at law. Thereupon a merry rivalry ensued and for a time it seemed as if equity might eventually spread itself over the whole field of civil justice but in the reign of James I equity was fenced back into its own field. The lines of demarcation between common law and equity were not made absolutely clear at this time however nor are they clear in all cases today. Still in a general way every lawyer knows where the law leaves off and where equity begins.

THE RIVALRY  
OF LAW AND  
EQUITY

In what cases then are the rules of equity applied by the courts today? Let it be explained first of all that equity has nothing to do with crimes but only with civil controversies. All criminal cases go to the law courts. In the second place only a small proportion of civil cases come within the field of equity jurisdiction. Most of them are adequately covered by the rules of common law or by the provisions of statutes and must be determined accordingly. Nevertheless there are some controversies which are governed exclusively by the rules of equity—for example controversies arising out of the administration of a

THAT EQUITY  
IS ONLY

trust by a trustee. And there are some cases in which redress may be sought either at law or in equity as the aggrieved person may prefer. These are known as instances of concurrent jurisdiction. In general however equity follows the law in other words equity does not intervene save in cases where the remedy at law can be shown to be inadequate.<sup>1</sup>

The same courts in England (as in the United States) now administer both law and equity. A statutory fusion of the two was provided by the Judicature Act of 1875. The court of chancery and the common law courts were merged into a single high court of justice. As a matter of convenience however the high court was organized in divisions and to the chancery division were assigned all matters which were dealt with by the old court of chancery prior to 1875. But the work of the chancery division is not confined to the giving of remedies at equity it extends to the giving of common law remedies as well. In a word there are no longer two competent systems of jurisprudence but a single system with two branches which follow somewhat different procedures. Do not misunderstand this paragraph as implying however that the rules of law and equity have been combined. Equity is as separate a body of jurisprudence as ever it was. Only the administration of the rules has been merged.

This then is the jurisprudence that the courts of England administer. Note that it is the courts of England (including Wales) not the courts of Great Britain. There is no system of law applying to the whole kingdom much less to the entire British empire or commonwealth of nations. There is no one court with final jurisdiction over the whole British empire although the House of Lords is virtually a supreme court for Great Britain and Northern Ireland as will be seen later. India, Southern Ireland and the various dominions such as Canada and Australia have their own legal systems and their own courts but appeals may sometimes be carried to London where they are heard.

It would be folly to attempt in a few paragraphs any statement of what the rules of equity are how they are administered and how they supplement the rules of law. Even elementary textbooks on equity run into hundreds of pages with chapters on trusts mortgages perpetuities liens, fiduciary duties, subrogation, accounting, marshalling of assets, estoppel, specific performance, discovery, injunctions, easements and all sorts of technical matters.

and determined as will be later explained by the judicial committee of the privy council

### JUDICIAL ORGANIZATION

The present day organization and procedure of the English courts is only about half a century old. The courts themselves are much older of course but they were entirely reconstituted by the Judicature Acts of 1873-1876. Prior to 1873 the judicial organization of England was in a state bordering on chaos with numerous tribunals possessing special functions, archaic procedure and overlapping jurisdictions. The general reorganization then brought the higher courts into a unified system with simplified procedure.<sup>1</sup>

THE  
JUDICATURE  
ACTS

One of the first features of English judicial organization that attracts the attention of an American student is the bifurcation of court business. In the United States the same court usually handles both civil and criminal cases although the two classes of suits may be assigned to different sittings. The organization of the English courts on the other hand is based upon a vertical division between criminal and civil case: the same courts do not usually exercise jurisdiction in both fields. A criminal case it should be explained is one in which the prosecution is conducted in the name of the crown; a civil case is one in which some private citizen or corporation brings a suit against another.<sup>2</sup> One aims to impose punishment for a crime; the other to obtain redress for a tort or civil wrong.

THE DOUBLE  
HIERARCHY OF  
ENGLISH  
COURTS

In England when a person stands charged with a crime he is brought before one or more justices of the peace or in the larger towns before a stipendiary magistrate. Minor cases are dealt with summarily in these courts which are known as courts of summary jurisdiction. Appeals may be carried to the court of quarter sessions which is a county court.<sup>3</sup> The court of quarter sessions also deals with cases which

1. THE  
CRIMINAL  
COURTS

A good general account of the present system is given in C. P. Patterson, *The Administration of Justice in Great Britain* (Austin Texas 1936).

It is also possible of course for the crown to bring a civil suit against an individual corporation.

This official is called a stipendiary magistrate because he receives a salary while justices of the peace do not.

Some of the larger towns however have courts of quarter sessions of their own.



are beyond the jurisdiction of the justices but not serious enough to warrant holding the accused for the assizes. If the evidence appears to indicate the commission of a serious offense (such as murder or manslaughter) the prisoner is held for trial at the next assizes. This is the designation of a court which is held periodically in each county and in each of the larger towns by a judge of the high court who goes around on circuit and sits with a jury. The assizes to some extent deal with civil as well as with criminal cases. For the metropolitan area of London there is a central criminal court popularly known as the Old Bailey which is to all intents the assize court for London and sits at least twelve times a year.

An appeal from these tribunals may be taken on points of law in any criminal case (or under certain conditions on questions of fact) to a court of criminal appeal which is made up of judges assigned to it from the king's bench division of the high court of justice. Finally if the attorney general gives consent the defendant in a criminal case may carry his appeal to the House of Lords. The attorney general does not ordinarily give this permission unless some new or perplexing legal question is raised. The gamut of criminal justice in England therefore runs through summary jurisdiction, quarter sessions, assizes, court of criminal appeal and House of Lords.

Civil cases in which no large amounts are involved come up first of all in courts which are called county courts although their jurisdiction does not in any way coincide with the bounds of the counties. These courts sit at frequent intervals in various parts of the district over which they have jurisdiction. They are presided over by judges who are appointed by the lord chancellor from among barristers of at least seven years standing. Strangely enough however most of the cases do not come before the judge at all. For at each place where a county court sits there is an official known as the register who is in effect a court clerk and he disposes of many suits by arranging compromises. Appeals from the county courts are taken to the high court of justice (see below) and from thence an appeal may be carried to the court of appeal which is the upper chamber of the high court of justice. If the amount involved is sufficiently large the case comes before the high court in the first instance and does not go to a county court at all.

This high court of justice to which reference has been made in

APPEALS IN  
CRIMINAL  
CASES

2 THE CIVIL  
COURTS

the foregoing paragraph, is organized in three divisions namely the chancery division (or court of chancery) the king's bench division and the division of probate divorce and admiralty. Cases come from the county courts to each of these divisions depending on the nature of the case. Appeals from the three divisions go to the court of appeal,<sup>1</sup> and under certain restrictions may be finally carried to the House of Lords. The ladder of civil courts therefore is county court, high court, court of appeal, and House of Lords.

THE HIGH  
COURT OF  
JUSTICE.

For Great Britain and Northern Ireland it will be noted, the House of Lords is virtually the court of last resort. But this does not mean that the seven hundred members of the House of Lords are expected to hear and determine the technical points of law which come up on appeal from the courts below. All such appeals are heard by seven law lords namely the lord chancellor and seven lords of appeal in ordinary. These dignitaries although members of the House of Lords need not be hereditary peers. The lord chancellor is the presiding officer of the House and a member of the cabinet. The six lords of appeal (or law lords as they are more commonly called) hold peerages for life. Invariably they are men of high judicial disinction, eminent judges or lawyers who are made life peers in order that they may exercise judicial functions which belong to the House as a whole. But these law lords when in session, constitute for their own purpose the whole House of Lords and are not in any sense a mere committee of it. They give and do not merely recommend judgment.

THE HOUSE  
OF LORDS AS  
A COURT

Special attention should be called to one other high tribunal, the judicial committee of the privy council, which is the ultimate court of appeal in cases which come from the courts of India, the British dominions and colonies as well as from the ecclesiastical courts in England.<sup>2</sup> Thus its jurisdiction covers a very wide geographical range. But it is not a court in the ordinary sense of the term. It is made up of the lord chancellor and former lord chancellors

A UNIQUE  
TRIBUNAL  
THE JUDICIAL  
COMMITTEE  
OF THE PRIVY  
COUNCIL.

The three divisions of the high court, together with the court of appeal, technically form one court known as the supreme court of judicature.

Other peers who hold, or have held, certain high judicial offices, may sit with them if they choose.

In addition it hears appeals from the courts of the Channel Islands, the Isle of Man, and from prize courts in time of war. Prize courts are courts which deal with the condemnation of captured vessels and other property.

the six law lords already mentioned the lord president of the privy council and some other members of that body together with certain judges appointed from the higher courts of India and the dominions—about twenty jurists in all. But the work of the judicial committee is actually performed by the lord chancellor and the six law lords, aided by their overseas colleagues on matters affecting their respective territories. This assistance is indispensable because the appeals which come before the judicial committee involve not only the interpretation of the common law but the application of principles derived from various widely differing legal systems such as those of India Hongkong French Canada and Malta.<sup>1</sup>

Not being a court in the usual sense of the term, the judicial committee of the privy council does not render judgment. It merely recommends to the crown that decisions of the courts in India Canada or elsewhere be confirmed or reversed. Every decision ends with the words 'Their Lordships will therefore humbly advise His Majesty etc.' But since its recommendations are always followed they are judgments to all intents and purposes. They are always followed by an order in council embodying the recommendations in the form of a judgment. Here again we have a survival of the ancient principle that the crown is above the law and may set aside judicial decisions. That idea died out in England long ago and decisions of the regular English courts can no longer be set aside by a royal order in-council. But in India and in the British colonies the doctrine of the crown's judicial supremacy has lived on.

When therefore a suitor is dissatisfied with a decision of the supreme court of Canada for example he is in certain cases allowed to petition His Majesty for redress. His Majesty so the theory runs turns for advice to his privy council and the privy council refers the issue to its judicial committee. The committee hears the arguments and recommends that the petition be granted or denied. That is the theory of the procedure. But practice has found a shorter cut and the petition goes directly to the judicial committee which in effect pronounces final judgment. There is no appeal from the rulings of the judicial committee hence it is a supreme court within its own field of juris-

<sup>1</sup> It will be observed that although there are two courts of last resort, the House of Lords and the judicial committee of the privy council the men who decide the cases are virtually the same in both.



judges of English courts enjoy They are appointed by the crown and hold office for life There are no elective judges in England or in any part of the British empire Even Ireland in its self drafted constitution of 1937 did not deign to follow the example set by most of the American states The practice of electing judges inevitably draws the courts into politics and renders them susceptible to political influences England has done well to preserve the independence of her courts by holding to the principle of an appointive judiciary Officers of the English courts other than judges—such as sheriffs and clerks—are also appointed not elected and have permanence of tenure

A second characteristic of English judicial administration is its speed English judicial procedure does not seem at first glance to be simple and some archaic formalities are still retained in the court room although they seem to serve no useful purpose Nevertheless everyone knows that cases move far more rapidly in English than in American courts<sup>1</sup> This is mainly due to the greater discretion which English judges possess in dealing with legal technicalities And this again arises from the absence of rigid constitutional provisions governing the legal rights of the citizen English courts do not tolerate the pettifoggery dilatory hair splitting tactics which lawyers are so freely permitted to use in American halls of justice The judge rules his court room pushes the business along and declines to permit appeals from his rulings unless he sees good reason for doing so Moreover when appeals are taken the higher courts never upset the judgments of the lower ones for merely technical errors They deal with merits not with quibbles

Something may also be attributed to higher standards among the members of the legal profession In England as has already been mentioned there are two kinds of lawyers solicitors and barristers The solicitor deals directly with the client and prepares the case for trial But he does not himself present the case in court he engages a barrister to do this for him. The barrister is a specialist in presenting evidence his business is to appear in court after every thing has been made ready for him This division of labor results in cases being better prepared and better presented than in America

A detailed comparison of the two systems is given in Pendleton Howard, *Comparative Justice* (Englewood (N. Y.) 1931)

1 THE LIFE  
TENURE OF  
JUDGES

2 THE ACCELERATION OF  
BUSINESS

3 THE  
STANDARDS OF  
THE LEGAL  
PROFESSION

where the same lawyer tries to do both things and often does neither of them well. To *prepare* a case requires patient industry, a scrupulous regard for accuracy, and a relish for details—in a word the research quality. To *present* a case effectively requires familiarity with court procedure, quickness of perception, dexterity in questioning—in a word the argumentative quality. Some lawyers have one quality and some the other. Very few have both.

A fourth feature of English judicial administration is the care with which the jury, as an institution, has been safeguarded against abuse. England is the ancestral home of the jury; it was there that the grand jury and the trial jury first became regular agencies of inquiry and adjudication. In the trial of all serious crimes, and in civil cases involving a substantial issue, a jury trial may be demanded in English courts except the lowest and the highest. In all serious criminal cases, moreover, the accused is proceeded against by a formal indictment which sets forth the nature of the offense, and he is entitled to a copy of this statement. But indictments are not returned by a grand jury, as in America. England virtually abolished the grand jury in 1933. The indictment is now framed by a judicial clerk with the aid of the prosecuting solicitor. England has been wise, moreover, in not overworking the trial jury system by extending it to the trial of unimportant civil disputes, thus making jury service a burden which busy citizens seek to evade. The jury system is under fire in the United States because it has been overworked and overburdened. No institution, however good, will stand an unlimited strain without giving way.

But the most impressive thing about the work of an English court is the fairness with which cases are heard and decided. The judges, not the lawyers, determine the pace. Barristers know that the manhandling of witnesses will not be tolerated, and they keep within the bounds of decency. They do not turn the court into a grill room. It amazes an American lawyer to see a murder trial begun and ended within a week, even when many witnesses are examined. In American courts it often takes that length of time to get the jury chosen. English courts keep abreast of their calendars and thus prevent long delays which are in effect denials of justice. It may be of course that this regularity with which the calendars are cleared

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occasionally spells injustice but there is less of it than in courts where lawyers have their way

A final characteristic of the English legal system remains to be noted for it stands in contrast with what one finds in France just across the Channel This is the absence of a broad distinction between ordinary law and administrative law between ordinary courts and administrative courts In France as will be seen later the officers of the government are not amenable to the ordinary courts for certain acts done in their official capacity For such actions they must be sued if at all in special courts known as administrative courts which follow a procedure of their own The English common law recognizes no distinction between the acts of a government official and those of an ordinary citizen The only official who is exempt from the jurisdiction of the regular English courts is the monarch himself Anybody else when brought to the bar of justice is required to show that his action was within the law otherwise he becomes personally liable for any injury that he may have done English jurists have laid great stress upon this right of the citizen to summon public officials before the ordinary courts They regard it as a right which places their legal system a notch above that of their Continental neighbors

But there is no occasion for Englishmen to harbor a superiority complex on this point They are rapidly developing a system of administrative lawmaking and of administrative adjudication for themselves—more rapidly than most of them realize <sup>1</sup> The system of administrative law as it exists in France moreover does not deprive the French citizen of any substantial right that a Briton possesses It is true that the Englishman can usually bring suit against a public official in the ordinary courts and perhaps secure an award of damages but this will not avail him much unless the official is able to pay the award which often he is not <sup>2</sup> The Frenchman must bring his

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In England a writ of habeas corpus may be brought against the crown by means of the procedure known as the petition of right but no writ of habeas corpus (arising e.g. from the negligence of a government official) can be brought against the crown

Although there is no regular system of administrative courts in England or in the United States there has been considerable development of administrative law in both countries These rules of administrative law are interpreted and

suit (under certain circumstances) in special administrative courts which are provided for the purpose. That is not really a hardship for if he obtains an award it is always enforceable for it is an award against the government not against the official personally. So if we regard the matter from the standpoint of what an aggrieved individual can actually obtain in the way of redress against an abuse of power on the part of public officials the absence of a regular system of administrative courts in England (and in the United States) is not necessarily a matter for congratulation. More will be said on this subject a little later in describing the judicial system of the French Republic.

An outstanding difference between English and American jurisprudence remains to be noted. The concept of unconstitutionality with which we are so familiar in the United States is wholly unknown to the courts of England. No English law is ever declared unconstitutional by the courts for nothing that parliament does can be set aside by any court high or low. It matters not that the law is repugnant to the provisions of Magna Carta the Petition of Right the Habeas Corpus Act the Bill of Rights the Parliament Act or any other of the so termed constitutional landmarks. If it has been enacted in good form it stands. Hence when an Englishman says that some action of parliament is unconstitutional he merely implies that it is a departure from some age old tradition. He does not mean that it is legally invalid or that there is any hope of having it declared so. But acts of the Indian and colonial parliaments can be held unconstitutional in true American fashion. And orders in council may be invalidated if they go beyond the authority of the statutes.

In America the citizen is accustomed to place a good deal of emphasis upon his constitutional rights—for example the right to freedom of press freedom of the press freedom from unreasonable searches and seizures freedom of speech and the other rights which are guaranteed to him in the national or state constitutions. The Englishman has no constitutional rights in this sense none that are beyond the legal authority of parliament to infringe. If parliament

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applied by an independent parliament, bureaus and board—generally with the right of appeal to the regular courts.

See Chapter XXX.



were to allow the taking of private property for public use without just compensation no court would stand between it and the despoiled citizen. But the Englishman loses nothing by reason of this absence of formal written guarantees. His rights are securely guarded by the ancient usages and traditions of his government. These traditions and usages are in reality more effective than any set of phrases written on paper. Freedom of speech, freedom of the press, freedom of worship, and the other civil rights have become so deeply ingrained in the national life that parliament with all its technical omnipotence dares not abridge them in time of peace.

*Quid sunt leges sine moribus?* Of what value are laws without traditions? The written decree does not amount to much unless it has

THE INFERENCE OF TRADITIONS the will and sentiment of the nation behind it. The French constitution of 1791 for example contained the most ironclad guarantees for freedom of the press, freedom of conscience, and the right of public meeting. Yet as Professor Dicey says, there was never a time in the recorded annals of mankind when each and every one of these rights was so insecure, one might almost say completely nonexistent, as at the height of the French Revolution.<sup>1</sup> The Mexican constitution of today contains a bill of rights closely modeled on that of the United States. It is studded with comprehensive guarantees for all sorts of rights. Yet these solemn assurances, as everyone knows, have been chiefly honored in the breach. And in the Constitution of the United States there stands a provision that no citizen (even in Georgia or South Carolina) shall be deprived of the suffrage on account of race, color, or previous condition of servitude.<sup>1</sup>

There is a certain advantage in having the liberties of the citizen based on traditions rather than upon law. For laws and constitu-

CUSTOMS ARE BETTER AFGUARDS THAN LA VS. tions are necessarily precise and technical in their terminology. This precision makes them rigid and when emergencies arise it is found that they either go too far or not far enough. It is exceedingly difficult

to frame guarantees of individual liberty so that they will amply protect the citizen and yet not become susceptible of abuse. Freedom of speech and of the press cannot be defined in unqualified terms. In England the rights of the citizen are broadly guaranteed by constitutional usage. But parliament may make exceptions to any and all of them when the occasion demands. So the high court of parlia-

ment' is a designation which has not lost its original significance. It is the supreme tribunal which interprets, applies and modifies these usages upon which the practice of English government relies.

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**THE LAW.** The most useful brief outlines of English legal development are W. M. Geldart *Element of English Law* (London 1912), Ed. and Jenks *Short History of English Law from Earliest Time to 1933* (London 1934), the same author's *Book of English Law* (3rd edition, London 1937), Harold Potter *Historical Introduction to English Law and its Institutions* (London 1932), C. H. S. Fifoot, *English Law and its Background* (London 1932), and F. W. Maitland and F. C. Montague *Sketch of English Legal History* (New York, 1915). More elaborate treatises are A. T. Carter *History of English Legal Institutions* (London 1902) and William S. Holdsworth *History of English Law* (9 vols., London 1924-1926). Mention should also be made of the last named author's one volume general *History of English Law* (London 1932).

**THE COURTS.** The development and organization of the English courts is discussed in Harold Potter *Introduction to English Legal History* (3rd edition, London 1933), A. T. Carter *History of the English Court* (London 1935), while the court procedure, especially in criminal cases, is outlined in G. G. Alexander *Administration of Justice* (Cambridge 1915). C. H. Melliss *The High Court of Parliament and Its Supremacy* (New Haven 1910) is one of the most valuable books in the field. General descriptions of the British judicial system may be found in C. P. Patterson *The Administration of Justice*

*Great Britain* (Austin, Texas 1936), F. A. Ogg *English Government and Politics* (2nd edition, New York, 1936), chap. xxv, and J. A. R. Marriott, *Mechanism of the Modern State* (2 vol., Oxford 1927), Vol. II, chap. xxii.

Three invaluable volumes are A. V. Dicey, *The Law of the Constitution* (8th edition, London 1915), the same author's *Law and Public Opinion in England* (Oxford 1914), and C. H. Allen *Law and the Making* (revised edition, Oxford 1930).

A useful small volume for comparative purposes is R. C. H. Ensor *Courts and Judges in France, Germany and England* (Oxford 1933).

## CHAPTER XVIII

### LOCAL GOVERNMENT

The liberties of England may be ascribed above all things to her free local institutions. Since the days of the Saxon ancestors her sons have learned at their own gates the duties and responsibilities of citizens — *Blackstone*

Democracy is said to have an educative value. But the educative value of a democracy depends very largely upon the nature and spirit of its local institutions. The county, the city, and the town are potential schools of citizenship as both England and America have long since discovered. It is in the arena of local politics that people most easily learn their first lessons in the art of governing themselves. Until you learn to govern or be governed by your own neighbors it is futile to expect that you can successfully govern people afar off. The complications and difficulties of government increase as the square of the distance.

The English system of local government is the result of a long evolution for the most part unguided and unplanned. There were shires, hundreds, townships and boroughs in Saxon times each with its own local authorities. After the Norman conquest the shires became counties, the hundreds disappeared, the townships passed for the most part into the hands of feudal lords and became manors, while the boroughs eventually secured their freedom and became chartered municipalities. Meanwhile a new unit of local administration fostered by the church and virtually taking the place of the old township came into being and ultimately attained some importance. This was the parish with its voluntary meeting of the parishioners presided over by the parish priest.<sup>1</sup> Originally the parish meeting dealt only with church affairs but it gradually acquired some civil functions as well. It was the forerunner of the town meeting in the New England colonies.

At the close of the middle ages there remained therefore three

After the Reformation he became known as the parson or rector

principal areas of local government in England—the county the borough and the parish. The administrative work of the county was entrusted to officials known as justices of the peace whose functions were originally those of peace officers but who proved to be convenient authorities for supervising many matters of purely civil administration such as the building of roads and bridges the maintenance of public order and the care of the poor. These justices were appointed by the crown. The boroughs or chartered towns were governed in the main by close corporations. Originally all the freemen of the borough had a voice in its government. But the lists of freemen were gradually narrowed until only a very small fraction of the inhabitants were entitled to a share in choosing the borough officials. These officials usually consisted of a mayor aldermen and common councillors.

LOCAL AREAS  
AT THE CLOSE  
OF THE  
MIDDLE AGES

Such in thumbnail sketch was the organization of English local government during the Tudor Stuart and Hanoverian periods. It came down practically unaltered into the nineteenth century. In the course of this long interval much of its earlier democracy was sapped away but the spirit of local self government was never wholly extinguished. For years during the Stuart period the king ruled without a parliament. There were no parliamentary elections. But there were local elections as before. In the boroughs and the parishes the freemen and the ratepayers continued to choose their own officers and thus keep alive the spark of English democracy.

Until the Industrial Revolution changed the face of England in the closing decades of the eighteenth century this scheme of government served tolerably well. There was no great popular dissatisfaction with it. But the transformation that was wrought by the coming of the factory system soon rendered it obsolete. New industrial towns grew up almost overnight. The woolen mills gave many of the older boroughs a new lease of life doubling and redoubling their populations within a few years.

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Soon these throbbing centers of industry cried out for better police protection better roads better sanitation. They made demands which the old local authorities were unable to meet. So appeal was made to parliament—and parliament instead of replacing the old authorities merely devised some new administrative machinery and added it on.

THE GREAT N  
O N LOCAL  
DISTRICTS

Local improvement districts were carved out, overlapping boroughs or parts of boroughs. The authorities of these districts undertook the improvement of highways and sanitation which the officials of the boroughs had neglected. Dissatisfaction with the administration of poor relief in the parishes again inspired the creation of poor law unions with elective officers (known as guardians) in charge of them. This practice of multiplying local improvement districts was the most significant feature in the development of English local government during the early years of the nineteenth century. And rather curiously it is also one of the most significant features in the development of *American local administration today*—just a century later.<sup>1</sup>

Now all this resulted in a veritable chaos of local areas, authorities and jurisdictions. There were justices of the peace, overseers, guardians, vestrymen, churchwardens, mayors, aldermen, councilmen and commissioners of a dozen sorts. There were borough rates, poor rates, school rates, sanitary rates—all levied periodically upon the bewildered taxpayer. In 1883 it was estimated that there were more than twenty-seven thousand different local authorities in England and that eighteen different kinds of local taxation were being levied on the people. The jungle of jurisdictions had become so dense that nobody could find his way through it. Yet the national authorities were reluctant to take the reform of local government in hand and make a job of it, for parliament has always disliked to reconstruct anything from top to bottom at one stroke. With characteristic caution therefore they went at the work piecemeal.

A beginning was made with the boroughs because they were the areas most urgently in need of reform. After an elaborate investigation parliament enacted in 1835 the Municipal Corporations Act which gave the boroughs (or cities) of England the general scheme of local government which they retain today. Many years later parliament took up the problem of county government. The Local Government Act of 1888 reorganized county administration in England, notably by transferring the administrative powers theretofore exercised by the

On this point see *The Government of the United States* (4th edition, New York, 1936) pp. 747-748.

The difference between a borough and city is of no political consequence. Chartered municipalities of whatever size are boroughs, but certain boroughs (by reason of their being the seat of a bishop or of some other case) are entitled to call themselves cities.

justices of the peace to elective county councils. Then in 1894 came the District and Parish Councils Act which swept away most of the multifarious special districts (such as highway, burial, sanitary and local improvement districts) and provided for the creation of new unified local areas in their place. These new areas are known as urban districts and rural districts. In 1929 another statute made it possible to combine or abolish a large number of these districts. It also made new arrangements for granting the local authorities financial assistance from the national treasury.<sup>1</sup> Finally in 1933 a comprehensive local government act consolidated into a single statute the powers and functions of the various local authorities. The framers of this act used the opportunity to eliminate many overlappings and anomalies which had accumulated during the preceding hundred years.<sup>2</sup>

These then are the five landmarks of reform in English local government: the Acts of 1855, 1888, 1894, 1929 and 1933. Between them they completely reconstructed the old system of pre-reform days. It need scarcely be added how ever that several other important statutes dealing with the various special phases of local government have been put through parliament during the past forty years.

As a result of this consolidating process there are now five principal areas of local government in England: namely the county, the borough, the urban district, the rural district, and the parish. The scheme of division may be briefly explained as follows. The whole country is first mapped off into administrative counties. Within these counties are urban and rural districts, the former being more densely populated than the latter. These districts are further divided into urban and rural parishes for the handling of neighborhood affairs. Any area which has received a municipal charter is a borough, and the larger boroughs are known as county boroughs because they virtually form administrative counties by themselves. London, as will be seen later, has a special government of its own.

#### COUNTY GOVERNMENT

The county is the largest local government division, but the term county is used by Englishmen in two senses. First there are

<sup>1</sup> See below p. 325.

<sup>2</sup> Full discussion see D. M. G. *The Local Government Act 1933* (London 1933).

the historical English counties descendants of the Saxon shires, with their ancient boundaries still unchanged. There are fifty two of them but since 1888 they have not served as areas of local administration. They still form constituencies for the election of members to parliament however and serve as areas of judicial administration with their justices of the peace. Each of these historical counties moreover has a lord lieutenant whose position has now become an altogether honorary one and the old county still serves as a geographical basis of English social life. But there is no county council or other governing organ in any of them.

Much more important from a governmental point of view is the administrative county. There are sixty two of these. In most cases they are identical in area with the historic counties but in a few they are not. The administrative county of London for example cuts into four historical counties. Within most of the administrative counties there are one or more county boroughs as they are called. These are urban municipalities which are exempted from the jurisdiction of the counties within which they happen to be situated. There are eighty three of them but during the past ten years no new ones have been created.

The governing organ of the administrative county is a county council consisting of a chairman, aldermen and councillors. The councillors are elected by the voters, one councillor from each of the election districts into which the county is divided. Their term is three years. The suffrage qualifications are the same as those established for municipal elections as explained in an earlier chapter.<sup>1</sup> The number of councillors varies according to the population of the county. The aldermen are not directly elected by the people but are chosen by the councillors. When the councillors have been elected they choose one third of their number to be aldermen, in other words if there are sixty councillors they add twenty aldermen to the council. They may choose these aldermen either from their own ranks or from outside. When they choose from their own ranks special elections are then held to fill the vacancies. The county aldermen hold office for a double term that is for six years but one half of them retire every three years. Councillors

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and aldermen sit together in the same body and have exactly the same voting power. There is no separation of functions or authority; it is merely that the alderman has a longer term than the councillor and a title that gives a little more prestige. The whole council, aldermen and councillors together, elects a county chairman usually from its own membership but not necessarily so.

A county council meets regularly four times a year. Its powers are extensive and varied. It supervises the work of the rural district councils, is responsible for the upkeep of main roads and bridges, has some duties with reference to county policing, maintains asylums, reformatories, industrial schools, and other county buildings, performs various functions in connection with the system of old age pensions and is the chief educational authority for the county.<sup>1</sup> Most of its work is done through standing committees such as committees on education, on public health and housing, on finance, and on old age pensions.

THEIR  
POWERS.

The county councils and their committees do not usually concern themselves with the routine work of administration but only with questions of general policy. The routine is handled by a permanent staff of county officials chosen on a non-political basis. This staff includes a county clerk, treasurer, surveyor (who has charge of highway construction), health officer, and various other functionaries. They are chosen by the county council but are not under civil service rules and (with a few exceptions) may be removed by the council at any time. In practice, however, they are chosen on their personal and professional merits and they are never removed on political grounds. The efficiency of county administration in England contrasts rather sharply with its notorious inefficiency and wastefulness in many parts of the United States. The reason is partly to be found in the fact that the administrative work of the English county is entrusted

COMMITTEES  
AND COUNTY  
OFFICIALS

It should not be understood, however, that the county council has immediate charge of all these things. Its police functions, for example, are performed through standing joint committees the members of which are selected in part by the county council and in part by the court of quarter sessions (see *above* p. 30). This committee is practically independent but depends upon the county council for portions of its funds.

Though, except as to the health officer who if he be a 'whole time' official, cannot ordinarily be moved except with the consent of the national ministry of health, the county surveyor, the consent of the ministry of transport must be obtained if the county council has accepted a grant from that ministry toward the payment of his salary.



to men who are chosen for their competence and do not have to play politics in order to hold their jobs from year to year

A county borough does not have a county council. The work of local government is performed by its regular borough council, a body which will be described a little later. Within the boundaries of a county borough the regular county officials have nothing to do; their functions are taken over by the borough authorities. This is quite a different arrangement from the one usually found in the United States where county officers continue to have jurisdiction over various matters within the largest cities. Officials of five different counties, for example, exercise authority within New York City.

Within each administrative county the old rural parishes are now grouped into rural districts (more than 600 of them), each district with a council elected by the voters. These councils deal with certain matters of sanitation, water supply, and public health—the last more particularly. They also have charge of minor roads, grant certain licenses, and have an assortment of miscellaneous functions. The English rural district corresponds in a general way to the township in the middle western American states. Its importance is gradually diminishing as England ceases to be a rural country.

Whenever any part of an administrative county becomes thickly settled (and hence has special needs in the way of sanitation, water supply, health protection, and the like), the county council has power to organize the area into an urban district. Thereupon the inhabitants elect an urban district council made up of at least one councillor for each parish within the district. There are no aldermen in district councils, but the council elects its own chairman and may choose him from outside its own membership if it so desires. The urban district council has a variety of local powers in matters of minor highways, housing, sanitation, public health, and licensing, its authority being somewhat more extensive than that of a rural district council. There are about 700 of these urban districts in England and Wales.

#### CITY GOVERNMENT

This brings us to the organization and work of the English borough. A borough or city is an urban district that has received a municipal charter. There are about 275 of these boroughs in all, ranging from small places with a few thousand population to great indus-

trial communities like Huddersfield and West Ham. Their government consists of a single organ, namely, the borough council (or town council as it is more commonly called).

THE  
BOROUGH

This council is composed of a mayor, aldermen and councillors all sitting together. The councillors are elected by popular vote for a three year term. The larger boroughs are divided into wards and the councillors are chosen under the ward system. Nominations for the council may be made by any ten qualified voters and the election is by secret ballot without party designations. The absence of party designations does not mean however that party lines are disregarded in borough elections. In most of the larger boroughs these lines are closely drawn, although not so rigidly as in national elections.

The councillors after election choose aldermen to the extent of one third of their own number.<sup>1</sup> They can be chosen from the ranks of the councillors or from outside as the council may prefer. When councillors are chosen to be aldermen the vacancies are filled at a special election. The aldermen hold office for six years but sit with the councillors and have no special privileges. Every member of the council, whether he be a councillor or an alderman, has an equal vote on all questions. By reason of their longer terms and greater experience however the aldermen provide the council with a steady influence which on the whole has been helpful.

BOROUGH  
COUNCIL

The mayor of an English city is chosen by the council, that is by the aldermen and councillors sitting together. Here again the council has complete freedom to choose from its own membership or from outside. Sometimes it goes outside but not usually. The mayor holds office for a single year and may be reelected. He is the presiding officer of the council and is entitled to vote on all questions, but he has no executive authority. He makes no appointments, and the council's resolutions do not need his approval. He has no *ex officio* power like the American mayor. His position is largely one of honor and in most cases he receives no salary. An allowance is made for official expenses, but it is usually small. It has sometimes been said that a wealthy peer makes an ideal mayor because social rather than executive leadership is what the office demands. All this contrasts

THE MAYOR

<sup>1</sup> Those aldermen who hold office for three more years to serve, also vote in making this choice.

very sharply with the office of the mayor in the United States

In England the council forms the real pivot of city government.<sup>1</sup> There is no division of power between the executive and legislative

#### POWERS OF THE COUNCIL

branches of local administration for the council is the executive and legislative authority combined. It adopts the by laws, determines the local tax rate, prepares and votes the budget, appoints all officials, and supervises the work of the municipal departments such as streets, police and fire, protection, health, sanitation, and schools. A large part of its work is done through committees. There is the watch committee for example, which has charge of police, and the education committee in charge of schools. These committees for the most part do not have any final power, but merely transmit their recommendations to the whole council, which makes the ultimate decisions.

Laymen govern the English city, therefore, even as they control the course of city government in the United States. But with this

#### LAYMEN AND EXPERTS

difference that in England they work more closely in cooperation with experts and are more amenable to professional advice. The council committee relies on the advice of men who have technical knowledge. One reason for this may be found in the fact that the council is itself responsible for the selection of these men. It appoints the entire administrative staff, including the town clerk, treasurer, chief constable, borough engineer, medical officer of health—the heads of departments as we call them in America. These officers are not named by the mayor as with us, nor are they selected by civil service competition.

The council is free to choose whom it will, provided the appointee has the general qualifications laid down by law. When therefore

#### HOW BOROUGH OFFICIALS ARE CHOSEN

a vacancy occurs in one of these positions the appropriate committee of the council receives applications for it. After considering the merits of these applications it recommends to the whole council the applicant who seems best qualified for the post, and this recommendation is practically always accepted. With a few exceptions, moreover, the council can dismiss an official at any time. In other words the administrative officials of English cities usually are not chosen under

<sup>1</sup>Two useful books on the council are E. D. Smith, *A City Council in History* (London, 1926) and G. R. Atlee and W. A. Robson, *The Town Council* (London, 1925).

civil service rules, as we understand them, nor are they given civil service protection against removal. They are in fact permanent officials, but in most cases without any legal guarantee of permanence. This security of tenure which rests on traditions not upon laws, is perhaps the most outstanding feature of English municipal government and the one which contrasts most strongly with the situation in American cities.

#### CENTRAL SUPERVISION OF LOCAL GOVERNMENT

How much home rule does an English city have? Is it left to manage its affairs in its own way or is it subject to strict supervision by the national government? The answer is this: It has less home rule than the American city but more of it than one usually finds in the cities of Continental Europe. Central control of English local government has been expanding steadily moreover and its expansion affords a lesson for the friends of municipal home rule in the United States.

RELATION OF  
CENTRAL TO  
LOCAL  
GOVERNMENT  
IN ENGLAND

Infringements upon local self-government are never popular in democratic countries hence they have to be disguised. The usual method of masking them is to offer the cities something for nothing such as grants in aid or subsidies from the central treasury. That is the main channel through which central control of municipal government has been developing in England. The national authorities with a show of generosity offer to help the counties or boroughs with part of their expenditures. It agrees to pay a portion of what it costs each city to maintain the local police department, for example. Then comes a regular inspection of the police by national inspectors to see that the government's contribution is being properly spent. This inspection discloses weak spots and the next step is to provide (as was done in the Police Act of 1919) that the central government shall have power to frame and enforce regulations relating to the organization pay clothing pensions and housing of municipal police. Or the national government, to promote the public health, offers to defray a portion of the local expenditures. Then, by an act of parliament in 1929 it provides that if surveys by national health officers show any local health service to be deficient the grant may be withdrawn. In other words the grant in aid becomes a

THE PROCESS  
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GRANTS-IN-  
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prelude to inspection then it leads to the imposition of uniform national standards upon the local authorities. As one English writer remarks: "The inspectors do not merely see and hear on behalf of the central authority: they often speak and even act for it."<sup>1</sup>

Prior to the Local Government Act of 1929 the national government in England gave subsidies to the local authorities for designated purposes—police, schools, roads, housing, health, and so on. But this statute abolished some of these separate grants and provided that a large fund should be annually distributed according to a general formula, with no specification of the amounts to be expended for particular purposes. This new arrangement makes it possible for the central government to withhold the entire grant in aid, or a portion of it, *if there is dissatisfaction with certain branches of local administration.*

The county, city, town, or other municipality which accepts a regular subsidy from a national or state government is starting on the path to political subordination. To safeguard control over its own affairs it must be willing to pay its own way. England a half century ago was the classic land of local self-determination. Today there are at least a half dozen national agencies which exercise supervisory jurisdiction over the affairs of English cities, namely the ministry of health, the home office, the board of education, the ministry of transport, the board of trade, and the ministry of agriculture.

The ministry of health has general control over poor relief, water supply, sanitation, public health in general, and the approval

of local borrowing in certain instances. The home office has surveillance over local police administration and is responsible for the inspection of factories and

mines. The board of education, as its name indicates, is concerned with the general oversight of all local schools which are supported by public funds in whole or in part. The ministry of transport has supervisory jurisdiction over tramways or street railways, ferries, docks, and harbors. Gas supply is nominally under the board of trade, although most of the control, so far as gas plants operated by the municipal authorities are concerned, is exercised by the ministry of health. Electric lighting comes within the purview of electricity commissioners in the ministry of transport. The ministry of agriculture and fisheries has supervisory powers in relation to markets.

Thus the local authorities have to deal not with one central department but with many. And the amount of supervisory juris-

diction which these several departments possess is not in all cases precisely defined. In some cases two departments share different portions of the same task. The board of trade for example has to do with the development of water power while the ministry of health deals with water supply. This distinction is quite logical of course inasmuch as the one is a matter of industry and the other touches the public health but the parcelling of jurisdiction in this way is confusing. It differs from the practice in most of the American states where the supervision of all public utilities (water gas electric street railways telephone lines and even motor busses) has been concentrated in the hands of a single body commonly called a public utilities commission.

In no case it should be pointed out is the work of local administration directly undertaken by the national authorities in England. They merely advise inspect regulate give approval or withhold approval. The general laws provide in many instances that the county borough district or parish authorities may do certain things with the approval of the appropriate national department. They also provide very frequently that the central department may make rules and regulations for the guidance of the local authorities. The latter resent this paternalism but there seems to be no way of avoiding it especially if the national treasury contributes part of the cost. And in any case under modern urban conditions it is hardly practicable to allow the local authorities complete freedom in matters affecting public health poor relief education and police protection. These things from their very nature must be handled with a certain amount of uniformity throughout the country. The massing of people into great cities is bound to bring some measure of centralized control no matter how strong the tradition of local self government may be. It is doing this in the United States as well as in England.

But the growth of central control in England has taken a different slant from that which it is following in America. Central control over local government in England is *administrative* in character and hence flexible. In the United States it is chiefly *legislative* and hence more rigid. The English plan is to provide that some central board or bureau shall determine whether local authorities may do this or that. The American plan is to settle the matter by a general law rather than by leaving it to administrative discretion.

XTEN O  
II I  
UP R TION  
IS AP LIED

E LISH A D  
AMERICAN  
METHOD OF  
CENTRALIZ D  
CONTROL  
COMPARED

And of course the discretion of a board or official is more elastic than the provisions of a statute can possibly be. When a law for example provides that all county commissioners shall establish and maintain public hospitals it gives them no leeway. It treats all alike which is in keeping with the American theory of a government of laws not of men. But the fact is that all counties are not alike in their size needs or problems. To treat them alike means injustice to some. In England under the policy of administrative control they are not made subject to uniform rules laid down by law but are left to be dealt with as individual problems.

The essential difference between English and American methods of central control over local government may be made clearer

AN ILLUSTRATION  
OF MUNICIPAL  
BORROWING  
IN THE  
UNITED  
STATES.

perhaps by a couple of illustrations. Take the matter of municipal borrowing. Many of the American states have fixed limits on the amount of indebtedness that their cities may incur. Some of them have put these limits in their state constitutions others have established them by state law. In either case the

usual provision is that a city may borrow up to a certain percentage of its assessed valuation and no more. It may borrow as it pleases up to this point without getting the consent of any state authority. But when it reaches the limit it must stop. This of course is a clumsy and inflexible way of keeping cities from going too far into debt. It makes borrowing too easy until the limit is reached then it makes borrowing almost impossible. The result is that some cities have wasted their borrowing power on unessential things and have then been forced to do without desirable improvements when the limit has been reached.

But in England when a city wants to borrow money it does not have to reckon with any fixed debt limit. It cannot borrow a *single*

NO MUNICIPAL  
DEBT LIMITS  
IN ENGLAND

shilling until it has first obtained approval either from parliament by special act or from the appropriate central department. In most cases the approval

must be asked by the local authorities whereupon the officials of the ministry investigate not only the financial resources of the city but the merits of the particular proposal. After the investigation has been concluded a report is made and the central authorities then approve or disapprove the application.<sup>1</sup>

A beginning has been made along this same line in a few American states notably in Indiana where a state board of tax commissioners has been given

Take another illustration. In America the laws of some states allow cities to own and operate certain public utilities such as gas plants, electric lighting plants, and street railways. In other states the laws do not permit this, or at any rate make it extremely difficult for cities to embark on commercial ventures of any kind. Such legal restrictions make no allowance for the fact that some cities may have good reason for embarking on a policy of municipal ownership, while others have not. In England the system is more flexible because the laws merely provide that municipalities may own and operate their public utilities, or may extend those that they already own, provided in each case that the consent of the appropriate national department is first obtained.

ANOTHER ILLUSTRATION  
MUNICIPAL OWNERSHIP

The advantages of administrative supervision, as compared with legislative control, are beyond question. The former is much more effective in achieving the desired end. It saves the time of the lawmaking body. But it could not be practicable on an broad scale under the American plan of government. A system of administrative control postulates the responsibility of the administration to the legislature. In England this responsibility exists, for all the central departments are the agents of parliament and accountable to it. But in the United States the administrative authorities are not the agents of the legislature. Most of them are appointed by the governor, who in turn, is not under the legislature's control. The state legislatures have no agencies to whom they can delegate powers and from whom they can exact a continuous responsibility. For that reason American state legislatures have kept the supervision of local government in their own hands, and have exercised it in the only way open to them, namely, by enacting laws. The English system of administrative supervision has been widely praised, and it is deserving of praise, but it would not be workable in the United States so long as we hold to the system of checks and balances upon which the whole structure of American government is built.

IF THE ENGLISH  
PLAN WOULD  
NOT BE PRACTICABLE IN  
THE UNITED STATES

Writers speak of the English system of central control, but it can hardly be called a system. It is not systematic. It has no uniformity. It has grown by accretion. From time to time it has been

power petition of any ten taxpayers to review any proposed municipal bond issue and veto the proposal if it finds good reason for doing so.



partially reorganized and some of the twists taken out of it but it has none of the coherence that marks the French system for example <sup>1</sup> It embodies no rigid philosophy of government The English habit has been to let things alone until they can be let alone no longer then to make no more repairs than are urgently required To use a homely metaphor they do not tear down the old house and build a new one with all modern conveniences They merely patch the roof repair cracks in the walls add a wing here or a gable there put in an extra window close up an unused door—and so on decade after decade until not much semblance of the old structure remains

A CONCLUDING  
WORD ON THE  
ENGLISH  
PRACTICE OF  
CENTRAL  
SUPERVISION

#### THE GOVERNMENT OF LONDON

Something should be said about the government of London for this world metropolis has bulked large in English political life for nearly a thousand years But what is London? The average American is confused as well he may be when he reads that the city of London had a population of about 14 000 at the last census This statement is literally correct but of no real consequence because the city is only a very small part of London The administrative county of London contains over four million people while metropolitan London commonly known as Greater London contains more than eight million It is Greater London to which Englishmen refer when they contend that it leads Greater New York in the race for primacy among the world's cities

THE THREE  
LONDON

The city of London is merely the ancient core of the modern leviathan occupying an area of about one square mile It is the historic entity which began as a Celtic town and became successively a Roman *ciuitas* a Saxon borough a Norman city It has remained to this day with its ancient boundaries virtually unchanged and its old form of municipal government unaltered for several centuries The area of the city is occupied by banks warehouses and public buildings

THE CITY  
OF LONDON

See below Chapter XXXI It ought to be mentioned that the description of local institutions given in this chapter does not apply to Scotland and Ireland They have their own areas and their own local government which differ considerably in detail but not in general arrangement from those of England The same truth holds and there are as differences in these cases being much more extensive.

which explains why it has a resident night population of only about fourteen thousand. In the day hours however its streets are thronged by hundreds of thousands who come into it to do business.

Around this historic municipality there grew up in the course of time a number of satellite communities which were organized as parishes each with its own government. Eventually there were more than a hundred of these parishes together with the city of Westminster all solidly built up and forming a great circle. This was the situation in 1888 when parliament was asked to intervene and consolidate the entire metropolis. It attempted to solve the problem by creating the administrative county of London with an area of over 100 square miles. Provision was made for a county council with extensive powers to serve as the chief governing organ of the new administrative county. A little later the county of London was divided into metropolitan boroughs, each having a limited range of local self-government.

THE SATEL-  
LITES OF THE  
OLD CITY

THE ADMIN-  
ISTRATIVE  
COUNTY OF  
LONDON

Finally there is the London metropolitan police district, or metropolitan London, which covers about 700 square miles. It is not a regular municipality but a district for police purposes only. It has no elective governing officials and its inhabitants do not constitute a municipal corporation. Yet people usually call themselves Londoners if they live within its boundaries which means that one Englishman in every five is a Londoner on that basis of reckoning. When a man is tired of London, said Dr Samuel Johnson, he is tired of life for there is in London all that life can afford.

METROPOLI-  
TAN LONDON

The city of London is a corporation made up of the freemen of the city that is of ratepayers who pay a small fee for the privilege of having their names inscribed on the rolls. This body of freemen governs the city through a lord mayor and three councils (or courts as they are officially called) namely the court of aldermen, the court of common council, and the court of common hall.

HOW "THE  
CITY" IS  
GOVERNED

To explain how these three councils are organized, and what their respective powers are would take more space than can be allotted here.<sup>1</sup> Suffice it to say that both aldermen and common

<sup>1</sup> For the detail see the author's *Governments of European Cities* (revised edition, 1927), Chap. IX.

councillors are elected by wards while the court of common hall is a sort of town meeting. Most of the power rests with the common council which manages all the municipal services through its committees but the lord mayor of London is chosen by the court of common hall from among the senior aldermen who have served in the office of sheriff.

The lord mayor of London has no independent powers. His office is purely an honorary one. He appoints no city officials and performs no executive functions. He merely presides at meetings of the three councils and represents the city on occasions of ceremony. At his own expense he provides a stately banquet and a gorgeous pageant—the one for the dignitaries of the city and the other for the people. He is always knighted by the king during his term if he has not already attained that rank. The salary attached to the office is generous (ten thousand pounds a year) but all of it and more goes for official entertainments.

The administrative county of London is governed by a county council made up of one hundred and twenty-four councillors and twenty aldermen. The councillors are elected by popular vote for three years, the suffrage being the same as in other municipal elections. The aldermen are chosen by the councillors either from within their own ranks or from outside and serve for six years. Councillors and aldermen sit together and have the same voting power. Together they elect each year a chairman of the council and may choose him from outside the council's membership. The practice has been to elect a new chairman each year and as a rule the choice has been made from within the council's membership.

Save for a lull during the war the London County Council elections have been stubbornly contested. There are three political parties in London politics. They call themselves Municipal Reformers, Progressives and Labor but they are virtually branches of the three national parties. The Municipal Reformers in London are largely Conservatives in national politics, the Progressives are mostly Liberals. It is sometimes said that the national parties as such do not figure in London elections and in a narrow sense that is true at any rate it was true until the rise of the Labor party. But in a broad sense the national party lines have always held fairly well in

THE LORD  
MAYOR OF  
LONDON

HOW THE  
COUNTY OF  
LONDON IS  
GOVERNED

COUNCIL  
ELECTIONS

London elections and in recent years they have been considerably tightened

The powers given to the London County Council are extensive in scope. It is the sole authority with respect to main sewers and sewage disposal, fire protection, tunnels and ferries and bridges (except those in the city). It has charge of those street improvements which are metropolitan in character. Subject to the approval of the ministry of health it makes public health regulations, but the enforcement of these regulations is left largely to the authorities of the metropolitan boroughs (see below). The county council also has large powers with respect to the construction and operation of street railways and it has undertaken several great rehousing schemes involving the demolition of slum areas and the erection of workmen's dwellings. It is responsible for the maintenance of the larger London parks (except crown parks) and for providing public recreation. It has comprehensive functions in the matter of education including elementary, secondary and technical schools. Finally the council has a long list of miscellaneous work to do—such as the licensing of theaters, the regulation and inspection of lodging houses, the administration of the building laws and the maintenance of various institutions for the unfortunate.

POWERS OF  
THE L.C.C.

The administrative county of London has no mayor and no official corresponding to a mayor. Its chairman is not an executive officer, for although he presides at council meetings he has no other powers. The council itself is the executive authority. But since executive functions obviously cannot be performed by so large a body, they are delegated by the council to committees and these committees devolve a large part of the work on the permanent officials. The higher officials in this staff are appointed by the council at its discretion, but the subordinate posts are now filled by civil service competition.

THE COUNTY  
CHAIRMAN  
AND THE  
PERMANENT  
OFFICIALS

Mention has been made of the metropolitan borough councils which share in the work of London government. The administrative county of London is a federation of boroughs, twenty-eight of them. These metropolitan boroughs are very unequal in size because an attempt was made to follow the traditional boundaries. Each borough has a local government consisting of mayor, aldermen and councillors all sitting together.

METRO O  
AN OR  
OU HS

to form a borough council This council has charge of local street building paving lighting and cleaning It also undertakes the construction and maintenance of subsidiary sewers the enforcement of health regulations and the building of workmen's dwellings It may and often does, own and operate the local electric lighting plant and it has various other functions of a local character

THEIR  
POWERS

The county council and the borough councils have nothing to do with the policing of London As for the city of London it has its own police For the great circle surrounding the city there is a metropolitan police force The metropolitan police district includes the whole county of London and parts of several other counties At the head of the district is a police commissioner who is appointed by the crown He has assistant commissioners appointed like himself Consisting of over 20 000 men the metropolitan police force of London is the largest in the world The commissioner has entire charge of organization and discipline but the financial administration of the force is entrusted to a receiver appointed by the crown who is responsible for the erection and management of all police stations the awarding of contracts the purchase of supplies and for all other matters outside the actual work of preserving law and order

THE METRO-  
POLITAN  
POLICE  
DISTRICT

These then are the chief authorities who govern the three Londons But only the chief ones there are literally dozens of others with all sorts of powers and functions Among urban governments the world over that of London is by far the most complicated In its profusion of authorities and jurisdictions the English capital far outmatches New York or Paris not to speak of Rome or Tokyo But London is an amazing community in the length and breadth of its area and in the heights and depths of its population From Mayfair to Pimlico is not far in distance but to look at them they seem to be in different worlds In such a vast and mottled wen of humanity one should hardly expect to find a simple form of government

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HISTORY Sidney and Beatrice Webb *English Local Government* (6 vols London 1906-1922) is an excellent historical survey J. Seligson and F. W. Hirst *Local Government in England* (2 vols London 1903) is also to a large extent historical Attention may also be called to E. S. Griffith

*The Modern Development of City Government in the United Kingdom and the United States* (2 vols. London 1927) W. A. Robson *The Development of Local Government* (London 1931) gives a more concise outline. Mention should also be made of the volume entitled *A Century of Municipal Progress* by H. J. Laski and others (London 1935).

**GENERAL DESCRIPTIONS.** The latest books of this nature are Herman Finlason *English Local Government* (London 1933) and E. L. Hasluck, *Local Government in England* (Cambridge 1936). J. P. R. Mudd *Local Government in England* contains a summary account published in the Home University Library Series (London 1937). John J. Clark *Local Government of the United Kingdom* (10th edition London 1936) is useful for special students of the subject and contains a good classified bibliography. There is a considerable discussion of borough (city) government in W. B. Munro *The Government of England* (revised edition New York 1927) pp. 1-190.

**LOCAL GOVERNMENT LAW.** Publication of the *Encyclopedia of Local Government Law* as begun in 1905 and in the date the material has been kept up to date by periodical supplements. W. I. Jennings *Principles of Local Government Law* (London 1931) W. A. Robson *Law Relating to Local Government* (London 1930) and H. E. Smith *Municipal and Local Government Law* (London 1933) are the best general books on the subject. Current information is given in the *Municipal Law Book* published annually.

**LONDON.** The most convenient sources of information concerning the government of the British metropolis are P. A. Harris *London and Its Government* (revised edition London 1933) and H. Morrison *How Government London* (London 1935) but mention should also be made of Sir Aston Webb's *London of the Future* (New York 1921). A. J. Glasspool *The Corporation of the City of London* (London 1924) explains the government of the city. Much interesting material is contained in the *Annual Report* of the London County Council and H. Haward *The London County Council from Within* (London 1932) gives an interesting account of the L.C.C. by one who has had close contact with it for so many years.

## CHAPTER XIX

### SCOTLAND AND IRELAND

All government, indeed every human benefit and enjoyment, and every prudent act, is founded on compromise. Magnanimity in politics is not seldom the truest wisdom and a great empire and little minds go ill together — *Edmund Burke*

#### SCOTLAND

Scotland like England was populated by Celtic tribes when the Romans first landed on the shores of Britain. But the Roman legions never pushed their way into the northern sections of the island and Scotland never became a part of the great Latin empire. Nor did the Saxons, when they came to Britain from across the waters succeed in conquering all of Scotland. The Scottish highlands continued to be inhabited by people of the Celtic race although some Saxons worked their way into the lowlands which constituted the southern part of the country. The various tribes or clans of Scotland gradually became united under a monarchy with its capital at Edinburgh. In due course moreover parliamentary institutions were developed not widely different from those of England.<sup>1</sup>

Throughout the middle ages and into the modern period Scotland managed to retain her independence. It happened however that the royal families of England and Scotland became related by the intermarriage of members who were not immediately in line for either throne. Then on the death of Queen Elizabeth in 1603 there were no Tudor heirs at hand and the Scottish people had the satisfaction of seeing their own king James VI inherit the throne.

<sup>1</sup> Wales is commonly called a "principality" but for all governmental purposes it is united with England. Edward I in 1284 formally annexed Wales, but the indigenous Welsh institutions were left in existence for the time being, although English law and legal procedure were partially introduced. It was not until 1535 that Wales was given representation in the House of Commons. Two centuries later (1747) it was made a rule that the members of England in an act of parliament should be taken to include Wales. The title Prince of Wales, when borne by the king's eldest son gives him no political authority.

## SCOTLAND AND IRELAND

of England<sup>1</sup> He proceeded to Westminster took the title of James I and inaugurated in England the ill-starred dynasty of four Stuart kings In this way Scotland and England became united under the same line of monarchs but each retained its own parliament. The same king dealt with one parliament at Edinburgh and with another at Westminster

This royal union naturally brought the two countries into closer relationship It stood the strain of the English civil war the Cromwellian dictatorship the expulsion of James II and ITS RESULTS the succession of the Orange monarchs Yet it was not regarded as altogether satisfactory by either country It was a union without unity The Scots were especially desirous of a share in the industrial and commercial prosperity which England was deriving from the trade with her colonies they also desired the privilege of freely shipping all their products into the English market England was not willing to concede either of these things unless Scotland would submit to virtual annexation So relations once more became strained and in 1704 the Scottish parliament announced that unless something were done it would proceed to choose a monarch of its own

To forestall an impending separation therefore commissioners from both countries were appointed to reach a common ground They managed to frame a treaty embodying concessions on both sides and this treaty was approved THE PARLIAM  
ENTARY  
1707 in 1707 by the parliaments concerned Briefly it provided for the organic union of the two countries under the name of Great Britain with a single parliament at Westminster The Scottish parliament was abolished and Scotland obtained representation in both the House of Lords and the House of Commons She was permitted to retain her own system of laws and legal procedure her own religion and local institutions In return for the abolition of the Scottish parliament the Scottish people were granted full freedom of trade with England and with the English colonies It was a fair bargain one country obtained political and the other economic advantages Scotland traded her parliament for pounds shillings and pence She did it with her eyes open And the Scottish people on the whole have not regretted the agreement of 1707 The union ushered in an era of material prosperity which

James VI was the son of Mary Queen of Scots who was a first cousin of Queen Elizabeth.



lasted for a long time and made the southern part of Scotland one of the richest sections of the United Kingdom

The government of Scotland as arranged by the Act of 1707 has remained unaltered in its essential features to the present time

**PRESENT GOVERNMENT OF SCOTLAND** There is a secretary of state for Scotland who has a seat in the British cabinet Like other members of the cabinet he is chosen by the prime minister Invariably he is a Scotsman although there is no legal requirement to this effect In a general way the secretary is responsible for the supervision of administrative affairs in Scotland in which work he is assisted by various functionaries and boards including a lord advocate an undersecretary for Scotland a solicitor general and other functionaries All laws passed by the British parliament apply to Scotland unless otherwise stipulated and many things are uniform in the two countries as for example the systems of national taxation and national defense On the other hand many things are different, because Scotland retains her own system of civil law and procedure her own hierarchy of courts her own ecclesiastical organization and her own distinctive scheme of local government

Scotland as has been said is represented in the House of Lords by 16 Scottish peers and in the House of Commons by 74 members, which is about what the population warrants In both chambers the Scottish members have exactly the same status as the English and are eligible for appointment to all ministerial positions As a rule they have been well represented in British ministries so well in fact that their prominence is a matter of frequent remark by outsiders Scotland has had a larger share in British administration than her population entitles her to have

**THE REPRESENTATION OF SCOTLAND IN PARLIAMENT** On the whole the feeling between these two sections of the United Kingdom has grown increasingly cordial during the period since 1707 Various new concessions to Scotland have been made There has been no general clamor for Scottish home rule much less for a Scottish republic Home rule bills have been introduced into the British parliament from time to time but they have never had the united support of the Scottish members Today there is considerable grumbling about the neglect of Scottish interests at Westminster but no strong movement to dissolve the partnership such as developed in Southern Ireland This is the more note

**SUCCESS OF THE SCOTTISH UNION AND FAITH OF THE RISH UNION CONTRASTED**

worthy when one recalls the fact that Saxon and Scot were not on very friendly terms for over five hundred years preceding the union.

The reasons for the difference between Anglo-Scottish and Anglo-Irish relations are not far to seek. Scotland was never conquered by England she entered the union a free country her people accepted a changed political status in return for fair compensation. REASONS  
FOR THIS. Apart from merely sentimental considerations, Scotland lost nothing by joining with England. An intelligent Scotsman of today contends that his country would now be better off if the treaty of 1707 had been rejected. Ireland went into the union under vastly different circumstances. The island was invaded and conquered by English armies the line of Irish kings was brought to an end by force and the powers of the Irish parliament reduced to a shadow. This parliament was allowed to continue its existence but it did not represent the majority of the Irish people and it could do nothing that was not subject to review at Westminster. The union of 1800 moreover was put through the Irish parliament by political trickery and manipulation. Ireland derived from the union of 1800 no commercial advantages of any account. It was a jug handled bargain. Ireland gave up her parliament mere wraith of a parliament that it was and got nothing in return. Finally the difference in religious belief made it impossible for this union to work out as the other had done.

#### IRELAND

Ireland's troubles with England go back a long way before the union of 1800. They are almost primeval. It is not possible to understand the Irish problem, as it stands today without some knowledge of its antecedents. In no other country with the possible exception of Poland A. TIQUITY  
O. THE IRISH  
RO. IEM. are the political conditions of the present so largely a heritage of the past. This past is one long chronicle of friction suspicion and hatred. Ireland blames England for it all and England blames Ireland for most of it. The truth is that both countries have been jointly responsible for Ireland's misfortunes in what proportion will doubtless remain a matter of controversy to the end of time.

Ireland at the dawn of history was peopled by Celts the kinsmen of the Scots and of the ancient Britons whom the Saxon invaders

drove out of England. These Celts had not united into a single Irish monarchy but were being governed by several native rulers when Henry II of England crossed the Irish Sea in 1171-1172 and conquered part of the island more particularly the region around Dublin which thereafter came to be known as The Pale. In this area English law and English judicial procedure were gradually established. There was also some immigration from England to The Pale but the newcomers quickly became assimilated despite all attempts to prevent this. In due course a parliament was established within The Pale but its authority was greatly limited at the close of the fifteenth century by a statute known as Poyning's Law. This law provided that all English statutes should apply to Ireland that the Irish parliament should never be summoned except with the prior consent of the English government, and that when summoned its acts should be subject to the approval of the king in council. Many years later the English parliament followed this with a declaratory act (1720) which asserted its right to legislate for Ireland on any and all matters.

By these and various other measures Irish self government was reduced to a phantom. Executive authority was vested in a lord deputy appointed by the crown and not responsible to the Irish parliament. Neither the lord deputy nor his parliament exercised any real authority outside The Pale. In these outer and relatively untamed regions the people gave their allegiance to various local chieftains or lords who were often at war with one another but always ready to unite against the English. Irish agriculture was handicapped by this ever recurring warfare and also by the prohibition of various Irish exports. The exporting of Irish wool was hindered for example and when the people set themselves to manufacture their wool into cloth the exporting of cloth was also forbidden (1699).

Nevertheless the rougher relations between the two countries. During the reign of Henry VIII (1509-1547) England broke relations with the Holy See and became Protestant while Ireland remained Catholic. This in itself widened the breach between the two countries. Then a little later the English government undertook to subdue the northern part of the island and when the people rebelled their lands were confiscated. Early in the reign

EARLY  
HISTORY OF  
IRELAND

THE PALE

POYNING'S  
LAW

EXECUTIVE  
HAND CAPS.

THE SETTLE-  
MENT OF  
ULSTER

of James I (1611) the great plantation of Ulster was laid out and settled by emigrants from England and Scotland who became possessors of the confiscated lands. As the new settlers were Protestants this action divided the island into two unequal religious camps and laid the foundation for much later bitterness.

Then came the struggle between Charles I and the English parliament. Ireland seized the opportunity to rise in revolt and was almost successful. England was dislodged from all save Dublin. But the day of reckoning was soon to arrive, for when Cromwell felt himself master of England he proceeded to Ireland on a mission of reconquest and retaliation. There he performed his task with a rigor which Ireland has not forgotten to this day. Extreme penalties were imposed upon the island by the English government, enormous tracts of land being taken from their rebellious owners and given to English military officers.

IRELAND AND  
CROMWELL

This Cromwellian Settlement was not a settlement at all for it did not break the spirit of the Irish people but merely left them in a bitterly hostile frame of mind with a determination to undo the wrong at the first opportunity. Such an opportunity seemed to be at hand in 1689 when James II, having been driven from the English throne, landed in Ireland and called upon the people for aid. Once more all Ireland except Ulster responded. But once more it was a bad gamble for James Stuart proved a frail reed on which to lean the Irish hopes. He and his army were overwhelmed at the Battle of Boyne (1690) and Ireland once more had occasion to learn what *lae victis* meant. The island was now so thoroughly cowed and enfeebled that no more uprisings took place for over a century.

IRELAND AND  
JAMES II.

THE BOYNE  
(1690)

During this period of relative peace the attitude of the English authorities softened somewhat. England had troubles of her own in the last quarter of the eighteenth century—troubles in America, in India and in Europe. The American Revolution also carried its lesson to Westminster. So in 1782 the English parliament renounced its claim to make laws for Ireland and repealed the restrictions which had been imposed by Poyning's Law. A year later it virtually conceded the supremacy of the Irish parliament and of the Irish courts within their own territorial jurisdiction. This seemed to give Ireland virtual home rule. Ireland is a nation, cried Henry Grattan in ecstasy.

IRELAND  
DURING THE  
EIGHTEENTH  
CENTURY

But it was home rule with a query. The English crown continued to be represented in Ireland by a viceroy who although technically responsible to the Irish parliament was in reality controlled by the English House of Commons inasmuch as he was a member of the English cabinet. This was a wholly impractical and anomalous arrangement bound to engender friction as time went on.

Things went along without ruction for a dozen years or more. Ireland began to grow prosperous her commerce expanded and

IRISH RE-EL-  
LION OF 1793

her industries showed signs of revival. Then the ill fortune which has dogged the Irish nation through so many centuries showed its sinister form once more.

The French Revolution gave Ireland an opportunity which her people could not resist. Not only did it send a wave of republican sentiment over the country but it brought England into a critical war with France. England's troubles are Ireland's opportunities — so an old Irish saying goes. Accordingly the French revolutionists carried their propaganda to Ireland convinced the people that with England's back to the wall they needed only to strike for deliverance and swept them into the Irish Rebellion of 1798. England's back may have been to the wall but her hands proved to be free. The rebellion was crushed in a whirl of reprisals.

#### THE UNION OF 1801 AND AFTER

Thereupon the English cabinet decided that Ireland should be put under bonds for good behavior. England must take no future

THE ACT  
O UNION

chance of being stormed from the rear. Accordingly the prime minister William Pitt the younger pre-

pared a plan for the parliamentary union of England and Ireland. An act of union was drafted and was submitted to the

Irish parliament for acceptance. Outside of Ulster the public sentiment of Ireland was against the measure nevertheless by dint of bribery intimidation coercive persuasion and other corrupt practices it was forced through the legislative chambers in Dublin.

It is said that Pitt spent nearly a million pounds sterling to get the measure passed. Some members of the Irish parliament got titles

some got lucrative offices some were bribed outright. In all fairness to Pitt it should be explained that these were the political methods of his time. He was not unkindly to Ireland and expected that this union would be followed by various conciliatory measures, but he found the English opposition too great.

By the terms of the union the Irish parliament was abolished and Ireland obtained representation in both Houses at Westminster—twenty eight members in the House of Lords and one hundred in the House of Commons. Executive authority was to be exercised through a viceroy representing the crown. As such he was responsible through the ministry to the British House of Commons. Irish laws and courts were unaffected by the union save that the British House of Lords now became the court of last resort. There were almost no economic compensations. The alien landowner continued to possess most of the country. The division of religious sympathies between England and Ireland made cordiality impracticable.

Save for a single flare up in 1803 however the Act of Union was followed by more than forty years of relative quiet. Amid the great economic changes which took place during this era bringing industrial prosperity to the rest of the United Kingdom the whole of Southern Ireland sat sullen depressed subdued. There were some local disorders but they were easily quelled. Daniel O Connell rose to be the political leader of his people during this period but he did not control the Irish members in the British House of Commons. Until after 1832 the suffrage was as narrow in Ireland as in England hence the Irish members did not represent the body of the Irish people. Many of them as in England were named by patrons or chosen by close corporations. As the nineteenth century wore on many Irishmen began to emigrate to the United States and to the British colonies and after the potato famines of 1846-1847 this exodus assumed huge proportions.

#### THE STRUGGLE FOR HOME RULE

An agitation for the repeal of the union led by O Connell had been set afoot as early as 1841 but for many years it made slow progress because it was associated in the English mind with republicanism and revolution. In 1873 however an association calling itself the Home Rule League was formed with the avowed aim of securing by peaceful and parliamentary means a reasonable measure of Irish self determination. This league undertook to secure the election of home rulers to parliament and under the leadership of Charles Stewart Parnell succeeded in creating an Irish Nationalist party in the House

of Commons The Nationalist party increased its numbers to the point where it eventually held the balance of power and in 1886 Parnell persuaded Gladstone the Liberal prime minister to bring in the first Irish home rule bill <sup>1</sup>

This bill provided for the establishment of an Irish parliament in Dublin with the right to make laws for Ireland and to levy taxes except customs duties and excises Executive power was to remain in the hands of a lord lieutenant appointed by the crown All matters of concern to the British empire as a whole and not to Ireland alone were to be dealt with by the British parliament In this parliament Ireland was no longer to be represented although she was to contribute one seventeenth of all imperial expenses In other words Ireland was to be taxed without being represented a provision which gave rise to much criticism

This measure did not wholly satisfy the Nationalists but they supported it Much less however did it satisfy some of Gladstone's followers in England These anti home rule Liberals, calling themselves Liberal Unionists bolted Gladstone's leadership voted against the bill on its second reading and defeated it in the House of Commons thus forcing the prime minister to choose between resignation and an appeal to the country A general election thereupon took place and the Liberals were overwhelmed by the new coalition of Conservatives and Liberal Unionists A Unionist ministry under Lord Salisbury then came into power and the first home rule bill went into the wastebasket But home rule continued to be a burning issue in British politics for the Liberals did not forsake the cause and at the next general election (1892) they found themselves once more in power although again dependent upon the Irish Nationalists for a majority in the House

So Gladstone in 1893 brought in his second home rule bill It differed from its predecessor in some important respects more particularly in providing that Ireland besides having a parliament of her own should be represented by eighty members in the British House of Commons.

These members however were not to vote on matters concerning England and Scotland but only on questions in which Ireland

The Nationalists at this time had 83 members in the House of Commons  
See b p 269

could be shown to have an interest. The Irish members were thus to be in the House on some questions and out of it on others; hence this arrangement was dubbed the in and out provision of the bill. English public opinion did not like this feature. It was looked upon as a menace to the whole system of ministerial responsibility—which in truth it was. A ministry would have a majority in the House of Commons on some questions and no majority on others. Nevertheless the House of Commons passed the bill and sent it to the House of Lords where it was rejected by a large majority. The Liberals did not press the issue farther because there was lukewarmness in their own ranks and Mr Gladstone was presently induced to retire from the leadership. His retirement was followed by a Unionist victory at the polls and for the next ten years the friends of home rule were on the opposition side of the House.

But the pendulum of politics eventually swung the other way and the Liberals came back into office. Having in mind what had happened in 1893 they did not bring in the third home rule bill until after they had curbed the powers of the Lords by the Parliament Act of 1911 and had thus made sure that their work would not be undone.

THE THIRD  
HOME RULE  
1 (1912  
191)

The provisions of this third home rule bill stipulated that there should be an Irish parliament of two chambers representing the whole of Ireland (including Ulster) with jurisdiction over all strictly Irish affairs. Certain matters such as a military and naval policy, foreign affairs, treaties and customs duties were exclusively reserved to the British parliament. The lord lieutenant of Ireland representing the crown was to act solely on the advice of the Irish cabinet which in turn was to have the confidence of the Irish parliament. This bill went through the Commons in 1912 but was once more rejected by the Lords. Accordingly under the provisions of the Parliament Act it could not go into force until the expiry of two years—that is to say until the summer of 1914.

Meanwhile Ulster came to the front with a threat of armed resistance if her people were subject to the jurisdiction of a Dublin parliament. A strong Unionist organization was formed in Ulster, large numbers of volunteers were enrolled and there was every indication that the inauguration of home rule in Ireland would be followed by a civil war between Ulster and the rest of the country. But notwithstanding

THE ULSTER  
OBEDIENCE



this serious danger the House of Commons gave the home rule bill its last passage over the two-year veto of the Lords

No sooner had it gone on the statute book in the summer of 1914 however than Western Europe launched into the World War

At once the friends and the foes of home rule agreed to call a truce on this question. Leaders of all political parties came together and agreed that the Irish question like all other domestic controversies should be temporarily shelved in order that the British empire might devote its entire strength to the great struggle. More specifically it was agreed that the home rule act although finally enacted should not be put into operation until the close of the war.<sup>1</sup>

During the first year of the war little was heard of the Irish question. Ireland was quiet and when Ireland is quiet there is apt to be some trouble on the way. Although the Nationalist leaders at the outbreak of hostilities, had pledged Ireland's support to the Allied cause, it soon became apparent that they could not carry the country with them. In Britain's emergency there were many young Irishmen who could see nothing but the best opportunity that had come to Ireland since Napoleon's day. So they urged the striking of a blow for complete independence for separation from the British empire for an Irish republic. Obstacles were thrown in the way of enlisting Irishmen for service with the Allies and secret negotiations with Germany were opened by one of the Irish leaders Sir Roger Casement. The Germans promised arms, munitions and money to aid an Irish rebellion.

The driving force in this movement for an Irish republic was the organization known as Sinn Féin.<sup>2</sup> Sinn Féin had been in existence

for some years prior to 1914 but had gained relatively few recruits until that year when the great European conflagration seemed to presage the incoming of a new world order. With mobilizations going on everywhere Irishmen (particularly young Irishmen) could not resist the contagion. By the thousands therefore they deserted the Nationalist or home rule party and enrolled themselves in the more

There was also an understanding that before putting the measure into effect the ministry would secure from parliament some concession to the desires of Ulster.

The word Sinn Féin (pronounced Shan Fane) a Gaelic Irish phrase means

radical ranks of Sinn Féin. The organization grew to large proportions and its leaders only awaited a propitious hour to strike.

As it turned out the hotheads got beyond control and struck too soon. Before there was any certainty of German cooperation an insurrection broke loose in Dublin and the Irish Republic was proclaimed (Easter Monday 1916). A hopeless venture from the start, the Easter rebellion was localized and put down within a few days. Several of the leaders were executed. But the quelling of this rebellion did not settle anything, and Ireland remained on edge until the end of the World War. At the general election which followed the armistice the country showed its temper by electing seventy-three Sinn Féin members to the British House of Commons and pledging them not to take their seats. Instead they were instructed to assemble in Dublin as a parliament of the Irish Republic.

These ongoings made it apparent that the Irish question could not be settled by putting into operation the home rule act of 1914. Ulster did not want it, neither did the rest of the country. The former objected that the act went too far, the latter that it did not go far enough. Early in 1920, therefore, the British prime minister, Mr. Lloyd George, laid before parliament a new measure intended to supersede the still-dormant home rule act of 1914. The outstanding feature of this new measure was its provision for two separate governments in Ireland, one for six counties in Ulster and the other for the remaining twenty-six counties of Ireland. Each of these two areas was to have its own parliament, the Ulster parliament sitting in Belfast and the parliament of Southern Ireland in Dublin. Each parliament was to have the usual powers within its own field of jurisdiction. In addition there was to be a federal council made up of forty members, twenty elected by each of these two Irish parliaments. This federal council was to have such powers in relation to all Irish affairs as the two Irish parliaments might agree to bestow upon it. Certain important matters, however, were reserved for the exclusive jurisdiction of the British government. Among these were national defense and foreign relations.

This new measure passed parliament without mishap and was

The significant portions of this Act are printed in E. M. Scott and D. P. Barr, *Irish Politics Today* (1921) Chap. III.

THE EASTER  
REBELLION  
(1916)

THE FOURTH  
HOME RULE  
MEASURE  
(1920)

accepted by the people of the six Ulster counties who proceeded to set up their new government. In the southern counties however the popular opposition to the scheme was so intense that no progress could be made. The people would neither elect members to the proposed parliament nor carry suits to the courts nor obey any order of the British authorities. Instead the masses of the people adhered in their allegiance to the Irish Republic obeyed the orders of its officials, and carried their controversies to its own courts. For a time the English government tried coercion sending large bodies of troops to Ireland in an endeavor to assert its authority. Guerrilla warfare ensued over a large portion of the country with much destruction of life and property. The titular officials of the republic were kept on the run the republican courts were broken up whenever found the whole island was in a turmoil. But in due season the British government became convinced that Ireland could not be coerced at any rate not without an enormous outlay and the Irish leaders also reached the conclusion that Britain could not be expelled. Then and only then did the time become ripe for negotiations on a give and take basis. It had taken nearly seven hundred years to bring the two countries into this frame of mind.<sup>1</sup>

#### THE IRISH FREE STATE

So negotiations for a treaty began in 1921. Certain members of the British cabinet and an equal number of delegates representing the Dail Eireann or de facto parliament of the Irish Republic undertook the work of reaching a compromise and eventually they were able to agree upon the draft of a treaty. This agreement was duly submitted to the British parliament and to the Dail by both of which it was ratified. It provided among other things that an Irish constitution should be prepared and that when this constitution had been accepted by both sides it should go into effect. The constitution was duly framed by a group of Irish leaders it was then ratified by a newly elected Dail Eireann and went into effect on December 6 1922.<sup>2</sup>

<sup>1</sup> The story of these years 1916-1921 is fully told in W. A. Phillips *The Re-Ireland* (2nd edition London 1926).  
<sup>2</sup> A copy of this document may be found in Darrell Figgis *The Irish Constitution* (Oxford 1923).



THE IRISH FREE STATE AND NORTHERN IRELAND (ULSTER)

But the constitution of 1922 did not prove satisfactory. During the ensuing ten years it was several times amended and when Eamon De Valera became head of the government after the general election of 1932 he proceeded to fulfill his pledge that he would make the Free State completely independent of Great Britain. A measure eliminating the requirement that members of the Irish parliament should take an oath of

THE ACCESSION OF DE VALERA (1932)

allegiance to the British king was soon passed. Likewise the new administration decided to withhold certain land annuities which were to be paid in accordance with the Anglo Irish Treaty of 1921. This caused the British government to retaliate by imposing heavy duties on Irish goods coming into Great Britain the proceeds being used as compensation for the defaulted annuities. To offset this the Irish authorities adopted the policy of paying bounties on exports. The war of trade and tariffs was waged with much bitterness for a time but eventually concessions were made on both sides notably in 1935 when an agreement was effected under which British coal was allowed into Ireland on better terms in return for a relaxing of the handicaps placed on the export of Irish cattle to England. A further *rapprochement* was made in 1936 when an Anglo-Irish trade pact went into operation with advantage to both sides.

Early in 1933 the Irish Labor party which had been supporting De Valera deserted him on an important issue and this desertion

forced a new election as a result of which the Republicans (or Fianna Fail party) were continued in power with a clear majority over all opposing groups.

Strengthened by this new mandate De Valera proceeded to widen the breach with England. He exercised the right to dictate the choice of a governor general for the Free State—a right which the British government had conceded to all the dominions during the imperial conference of 1930. Then he obtained enactment by the Irish parliament of a bill which eliminated from the Free State Constitution the right of the governor general to withhold the royal assent from Irish legislation. Another measure abolished the right of Irish citizens to carry appeals from the Free State supreme court to the privy council in London.

The authority of the Irish parliament to do this under autonomy granted to all the dominions by the Statute of Westminster was subsequently upheld by the judicial committee of the privy council in the case of *Moore v Attorney General* for the Irish Free State (June 6 1935). This decision held that the Statute of Westminster (see pp 382–383) superseded the British Act of 1922 approving the Irish constitution and hence that the latter could be varied at any time by a simple act of the Irish parliament. In other words the Statute of Westminster was held to have emancipated the Free State along with the other British

HIS BREACH  
WITH ENGLAND

THE ELECTION  
OF 1933 AND  
ITS RESULTS

AN IRISH  
COURT DECISION

dominions from all parliamentary restrictions upon constitutional change. Did it also operate to relieve Southern Ireland from obligations assumed in the Anglo-Irish treaty of 1921 for example the obligation to permit Irish harbors to be used as naval bases by the British fleet? The text of the decision would certainly give that impression but it has been criticized as terminologically inaccurate and the matter is still in controversy.

#### THE NEW CONSTITUTION OF EIRE

Finally in 1937 President De Valera presented to the Dail a wholly new constitution which was accepted by that body. It then went before the voters at a general election and was ratified but not by the overwhelming vote that had been expected. While this constitution proclaims itself to be established for the whole of Ireland (Eire) it nevertheless declares that pending the reintegration of the whole island the laws enacted by the Irish parliament shall extend only to the territory of the Irish Free State.

What is the status of Eire or Southern Ireland under the new constitution? Englishmen and Irishmen alike find that question a difficult one to answer. In all respects except one the new constitution establishes an independent republic with untrammelled rights of sovereignty. This single limitation is related to the use of Irish harbors by the British navy in time of war or of strained relations with a foreign power. Great Britain has not yet surrendered this right nor is it at all certain that she will ever do so. And so long as the right remains it is difficult to see how Ireland can be free to make any alliance or any agreement to be recognized as a neutral by

In deciding this question the judicial committee of the Privy Council laid down that the Statute of Westminster gave to the Irish Free State a power and authority which would be greater than that of the Treaty — that in that which would be the final test to be laid down by judicial decision. But this has not been generally so regarded by English constitutional authorities. So for example A. Berridge in his *The Germanity of the British Empire* (New York 1935) pp. vi and Henry Harrison *Ireland and the British Empire* (London 1937) p. 196.

This vote was 685 to 105 in favour and 526 to 945 against. This was far from decisive though the Southern Irish is united with the question of complete separation from Great Britain.

The fullest test and best discussion is in Henry Harrison *Ireland and the British Empire* (London 1937).

Britain's enemies in time of war The new constitution (Article 29) provides likewise that

For the purpose of the exercise of any executive function of Eire in or in connection with its external relations the government may to such extent and subject to such conditions if any as may be determined by law avail or adopt any organ instrument or method or procedure used or adopted for the like purpose by the members of any group or league of nations with which Eire is or becomes associated for the purpose of international cooperation in matters of common concern

Thus opens the door for cooperation with the other members of the British commonwealth of nations so far as the external relations of Eire are concerned and the Irish parliament has passed an act providing that the king who is recognized by the British commonwealth of nations as the symbol of their co-operation is also authorized to act on behalf of the Irish government (when advised by the Irish authorities to do so) in such matters as the appointment of diplomatic representatives and the making of international agreements

Provision is made in the new constitution for a President who is to be elected by direct vote of the people He is to have a seven year term and will be reeligible The President serves as the chief executive and on nomination of the Dail he appoints the prime minister On the advice of the prime minister and with the approval of the Dail he likewise appoints the other members of the ministry But the President must follow the advice of the ministry except in those matters where the constitution gives him absolute discretion or where it provides for consultation with the council of state or where it provides some other channel of procedure<sup>1</sup>

THE PRESIDENT  
AND  
THE PRIME  
MINISTER.

The powers of the President may be summarized in this way I O nomination of the Dail he appoints the prime minister II O the advice of the prime minister he (a) appoints the ministers after the Dail has given its approval (b) may dismiss ministers (c) summons and dissolves the Dail (d) signs bills that have been passed or which are deemed to have been passed by both Houses, (e) exercises supreme command of the defence forces subject to regulation by law (f) grants pardons (g) performs all other functions which are best vested in him by the constitution but are not otherwise limited III After consultation with the Council of State (a) may convene either or both Houses, or communicate with them, (b) may refer any bill other than a money bill to a proposed constitutional amendment, to the supreme court for an advisory opinion and if the court's opinion is adverse shall refuse to sign the bill (c) may address a message to the nation if the ministry also approves IV O the question of majority the Senate or a vote of the Dail he may decide that a bill passed with the

The national parliament of Ireland (Eire) consists of two chambers namely a House of Representatives (Dail Eireann) and a Senate (Seanad Eireann) The former is made up of members elected from constituencies having at least three members under a system of proportional representation by means of the single transferable vote

THE IRISH  
PARLIAMENT

1 THE DAIL

Universal suffrage is provided The maximum term of the Dail is seven years but like the British House of Commons it may be dissolved at any time within that period The power of dissolution rests with the President on the advice of the prime minister but the President may refuse to dissolve the Dail on the advice of a premier who has ceased to retain the support of a majority in it

By the new constitution the Dail is given the usual powers of a lower chamber with the right of initiative in financial measures Provision is made as in the rules of the House of Commons that no bill or resolution for the appropriation of money can be passed by the Dail unless the purpose of the appropriation shall have been recommended by a message bearing the prime minister's signature

ITS POWERS

The Irish Senate has sixty members of whom eleven are named by the prime minister and forty nine elected Six of these are chosen by the two Irish universities (National University and the University of Dublin) The remaining forty three are selected from five panels containing names of persons who have been nominated to represent the chief national interests and activities (e.g. agriculture industry labor etc) The method of constituting the five panels is left to be determined by law and the final selection of senators from the panels is made under a system of proportional representation by a small electorate consisting of every person who shall have been a candidate for the Dail at the last general election and who shall have received at that election at least five hundred first preference votes For these senatorial elections the whole country forms a single constituency Senators hold office for the same term as members of the Dail and a general election for the Senate must take place within ninety days after the former is dissolved

2<sup>TH</sup>  
SENATE

Se le n urr is f u h t l m p r t a a s l w r r t t b g  
b m i t d t p p l f d m w t h l d u n t t a f l g a l l t n  
V A t h u b l t d t h m y f t o d s o l t h D a i l t h d v i c e  
f p m m t w h l g t l s m j t y m t



The rule as to relations between the two chambers with respect to money bills is much the same as in the British House of Commons

RELATIONS  
BETWEEN THE  
TWO  
CHAMBERS

1 MONEY  
BILLS

Such measures when passed by the Dail go to the Senate. Within twenty one days a money bill must be returned to the Dail which may accept or reject the Senate's amendments. If the measure is not returned within the twenty one days or if the Dail rejects the amendments the bill is deemed to have

been passed by both chambers and becomes a law. Thus the Dail is given absolute supremacy as respects money bills. In case of disagreement as to whether a measure is or is not a money bill the chairman of the Dail decides but an appeal from his ruling may be taken to a committee on privileges appointed for the purpose. This committee named by the chairman of the Dail after consultation with the council of state is to be composed of an equal number of members from both chambers with a judge of the supreme court as its chairman. The decision of the committee on privileges is final.

As respect all measures other than money bills the two chambers are given equal powers of initiative. And the assent of both chambers

2 OTHER  
MEASURES

is necessary to the enactment of such measures. But if the Dail passes any bill or resolution other than a money bill and if such bill is rejected by the Senate

or left without action or passed with amendments to which the Dail does not agree—how is such disagreement settled? The constitution provides that in such cases the Dail must wait for ninety days after the measure has been sent to the Senate. Then within the next 181 days it may by its own action give the measure the force of law. If however the measure is one which is certified by the prime minister as an urgent or emergency measure the Dail may shorten the ninety day period if the President after consultation with the council of state concurs in such action. Thus it is that the Dail can enact any measure without the Senate's concurrence after a lapse of ninety days and any emergency measure immediately.

All bills are sent to the President for his signature and for promulgation by him. He has no power of veto but in the case of any measures other than money bills and proposals to amend the constitution the President may after consultation with the council of state submit such measure to the supreme court for a ruling on its constitutionality.

ADVANCE  
RULING  
ON CONSTITUTIONALITY

tutionality This ruling must be given within thirty days mean- while the President delays his signature and if the court decides adversely to the bill he withholds it altogether and the measure fails to go into force This arrangement is designed to have the constitutionality of measures determined before they are put into effect

A somewhat novel provision moreover enables measures to be withheld for a popular referendum In the case of any measure (other than a proposal to amend the constitution) on which there has been disagreement between the two chambers but which has been passed under the rules relating to such disagreements a petition can be presented requesting the President not to sign the measure This petition must state that the measure is of such national importance that the will of the people thereon ought to be ascertained The petition must be signed by a majority of the members in the Senate and by at least one third of the members in the Dail On receipt of such a petition the President after consultation with the council of state may withhold his signature until the people at a referendum have approved the measure or until the Dail has once more approved it after a dissolution and new election

PRO TIO  
OR A  
REFERE. D M.

The council of state to which reference has been made in the preceding pages is composed in part of ex officio members and in part of persons appointed by the President The ex officio members include the prime minister the deputy prime minister the chief justice the chairman of the Dail the chairman of the Senate and the attorney general together with such persons as have held certain of these offices in the past The appointed members may not number more than seven Under ordinary circumstances the President is to be governed by the advice of his ministry who are in turn responsible to the Dail but there are a number of occasions specified in the constitution in which he may not act until after consultation with the council of state

TI CO NCI  
O STATE

The Irish supreme court, established by the new constitution is given both original and appellate jurisdiction Its members are appointed by the President and the number of judges is regulated by law Justices hold office for life and may not be removed except for stated misbehavior or incapacity and then only on resolutions passed by both chambers

IRISH  
SU. RE ME  
OUR

Amendments to the constitution are to be initiated in the Dail and after having been passed (or deemed to have been passed) by both chambers must be submitted by referendum to the people

AMENDING  
THE CON-  
STITUTION

The constitution contains various articles relating to personal and property rights. These provisions for example forbid the granting of titles of nobility the deprivation of personal liberty except in accordance with law the inviolability of homes the right of citizens freely to express their opinions the right of peaceable assembly the integrity of the family the provision of free primary education the guarantee of private property freedom of religious belief and many other fundamental rights

THE LL  
OF RIGHTS

Local government in Ireland continues for the most part as it was before 1922. There are twenty seven administrative counties each with its own elective county council chosen under a system of proportional representation. The cities (or boroughs) have much the same organization as in England (except that the aldermen are directly elected) but the minister of local government has been given power to dismiss county or city councils from office and replace them by appointive commissioners. The most interesting (and significant) feature of the local administrative system is the power of the central government to select all the paid officials who are employed by the counties and cities. This is done through a local appointments commission which sits in Dublin<sup>1</sup>. This commission prescribes the qualifications and holds the competitive examinations. The final selections are made by it without giving the local governments any share in the matter. And after an appointment is made the local authorities cannot dismiss an official although he is paid out of the local treasury. He can only be dismissed with the consent of the ministry. This represents an extraordinary centralization of the appointing and removing power. It is the absolute negation of municipal home rule—and in Ireland of all places. Whether such a system can long be maintained is questionable. Whether it will conduce to the development of a true sense of civic responsibility in local government is even more questionable.

IRISH LOCAL  
GOVERNMENT

It has three members: viz. the secretaries of the financial and local government departments.

## NORTHERN IRELAND

By the Treaty of 1921 the six northern counties of Ireland were given the option of joining the Free State or of continuing their separate government under the Act of 1920. They chose the latter alternative. Northern Ireland has her own parliament with a Senate and a House of Commons, a cabinet and a governor. Members of the House are elected by the people from single member districts. The senators are chosen by the House for eight year terms. When disagreement arises between the two chambers over a non financial bill the measure goes over until the next session. Then if the disagreement persists a joint sitting is held and the matter voted upon. In the case of money bills the Senate can reject but is not permitted to amend. If it rejects a money bill however a joint sitting can be required at once without waiting till the next session. The governor of Northern Ireland is appointed by the crown but is bound by the advice of his ministers as in the other dominions. The ministers in turn are responsible to the House. Northern Ireland continues to be represented in the British House of Commons as before the treaty.

The six northern counties constitute nearly the whole of the province of Ulster and have formed the most prosperous portion of Ireland. They occupy an area less than half the size of Maryland with a population of about a million and a quarter. Belfast is the capital. Northern Ireland differs in religious affiliation from the rest of Ireland and that is the chief reason why one small island seems to require two separate governments.

SCOTLAND G. M. Thompson *A Short History of Scotland* (London 1932)  
 E. E. B. Thompson *The History of Scotland 1690-1907* (London 1935)  
 D. A. D. J. R. S. R. *The United Kingdom and Ireland* (London 1920)

IRELAND HIS ORY The following are many of the histories of Ireland. The most useful for the general student are P. W. Joyce *Celtic History of Ireland* (London 1914) W. O. C. Morris *Ireland 1494-1905* (Cambridge England 1909) and S. Gwynn *The History of Ireland* (London 1922). Attention should also be called to E. R. Turner's *Ireland and England* (New York 1919) which contains a very good bibliography.

HOUSE RULE On the home rule movement the chief works are P. G. Cambridge *Ireland and the Home Rule Question* (London 1911) written for the

Unionist point of view and S. G. Hobson *Irish Home Rule* (London 1912) which is strongly Nationalist in tone. F. H. O'Donnell *History of the Irish Parliamentary Party* (2 vols. London 1910) is a full and trustworthy recital.

**THE EASTER REBELLION AND THE TREATY** The Sinn Féin movement is described in R. M. Henry *The Evolution of Sinn Féin* (London 1920) and the Easter insurrection in John F. Boyle *The Irish Rebellion of 1916* (London 1916). A much more impersonal volume is *The Revolution in Ireland 1906-1923* by Professor W. Alison Phillips (2nd edition London 1926).

**THE CONSTITUTION OF 1922** The most useful books on Irish government prior to 1937 are Nicholas Mansergh *The Irish Free State: Its Government and Politics* (London 1934), Darrell Figgis *The Irish Constitution* (Dublin 1927), S. Gwynn *The Irish Free State 1922-1927* (London 1928), Warner Moss *Political Parties in the Irish Free State* (New York 1933) and J. G. S. McNeill *Studies in the Constitution of the Irish Free State* (Dublin 1925).

The latest and best book on the relations between Ireland and the British commonwealth of nations is Henry Harrison *Ireland and the British Empire* (London 1937).

The government of Northern Ireland is described in A. S. Quekett, *The Government of Ireland 1920 and Subsequent Amendment* (Belfast 1933) and in Nicholas Mansergh *The Government of Northern Ireland* (London 1936).

## CHAPTER XX

### THE GOVERNMENT OF INDIA

The successful domination of the Indian Empire by the English has been one of the most notable and admirable achievements of the white race during the last two centuries — *Theodor Mommsen*

India is the vast and varied Italy of the Asiatic continent a great peninsula fenced on the north by towering mountains but protruding far southward into the tropical seas. To Europeans of the middle ages it was dimly known as a far away land renowned for the spices and other costly commodities which it supplied. When Englishmen during the sixteenth century began to take an interest in India the peninsula was a hopeless jumble of diverse native governments races religions and languages. The Great Mogul at Delhi was nominally overlord of them all but his authority did not count for much outside a relatively small area. His extensive Mogul empire had become disintegrated into a host of kingdoms principalities states and territories. India in 1600 was like Continental Europe at the same epoch a chaos of political rivalries big and little with endless quarrels going on and no outstanding rulership. This must be kept in mind if one is to understand the ease with which the English brought the country under their sway.

England's interest in India dates from the chartering of the East India Company a body of commercial adventurers desiring to trade with the Orient. This company in 1600 was given wide powers including the right to acquire territory and to make regulations for the government of such acquisitions. Although its chief activities were commercial the East India Company soon found it desirable to secure by purchase from the native potentates various tracts of land immediately surrounding its trading posts or factories. These land holdings were gradually extended by further treaties and purchases until the company became the owner of large territories in which it set up its own civil government. The

INDIA IN  
THE  
TELEPHONIC  
CABLE

HOW  
GREAT  
THE  
FIRST  
MOLD  
INDIA

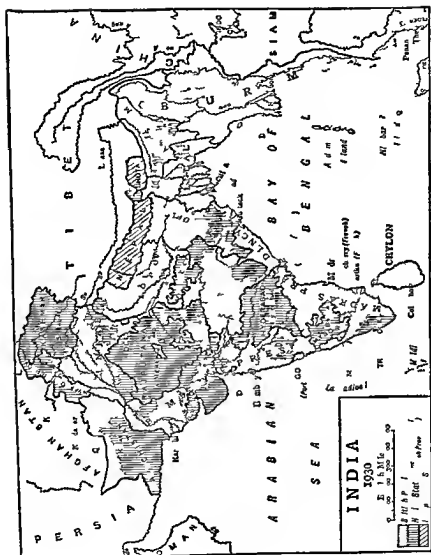
East Indian trade turned out to be very profitable and in some years yielded dividends of one hundred per cent hence the company's operations were rapidly extended to many parts of the peninsula. Large stores of valuable merchandise were concentrated at various points and had to be protected. The native chiefs could not guarantee this protection so the company inaugurated the policy of maintaining at each of its posts a small garrison of Englishmen drilled and officered in military fashion. And with the rapid increase in the number of trading posts these garrisons eventually gave the company control of a sizable army.

### THE STRUGGLE WITH FRANCE

In due course however rival exploiters of the trade came into the field more particularly the French East India Company which was organized in 1664. This company also established trading posts and warehouses in India some times not far from the English settlements. Similarly the French entered into negotiations with the native rulers and secured control over various tracts of territory. Like the English, moreover they stationed garrisons to protect their trading operations. But this policy of keeping constabularies in India proved rather expensive and after a while both companies found it cheaper to hire and train native troops. They found that these natives made good soldiers when drilled and commanded by European officers.

In this respect the native races in India differed from those of North America. The brown man was amenable to military discipline the red man was not. Although both the French and the English tried to drill their respective allies in the American colonial wars they never met with any success. The North American Indian could never be persuaded to fight in European formation. Given a musket he fought as with bow and arrow skulking behind trees and jumping around from one ambush to another. He would not march in column of squads or deploy into line when the enemy appeared. But the natives of India were ready to do it. What is more they were willing to do it for half the pay that Europeans demanded.

So both the English and French East India companies soon had large native armies on their hands. And of course these armies had to have something to do. Mercenaries are unprofitable unless they



E. W. L. L. d.



can be kept employed Opportunities for trouble moreover were easy to find for the native rajahs were constantly at war with one another and they naturally tried to secure the commercial companies as allies So whenever two rajahs came to blows they would make overtures to the English and French companies for help offering grants of land privileges and various trade concessions in return

In this way the two companies were led into intrigues secret treaties alliances and finally into open warfare When the English supported one claimant to a native throne the French by sheer force of self interest felt obliged to support his rival Thus it came to pass that English and French officers were leading company troops against each other under the flags of their respective countries although England and France were supposedly at peace Had India been a nation a united country with a strong central government this condition of affairs would never have been tolerated but there was neither unity nor consciousness of nationalism So the whole peninsula became a cockpit in which the two European commercial companies fought their duel for supremacy When the combat thickened these companies drew their respective governments in and the Anglo-French conflict of 1753-1761 became a war of almost world wide dimensions French and British armies battled in India in Europe and in America as well

The issue as concerned India was decisively settled by the outcome of this war England holding control of the seas was able to support and reinforce her troops while the French were not As a consequence the English won a series of victories and by the Treaty of Paris (1763) France agreed to withdraw from India reserving only a small tract of land at Pondichery The British East India Company meanwhile clinched its hold upon the country by reducing the more powerful native rulers to subjection The Great Mogul at Delhi became its vassal It deposed other native potentates and installed rulers of its own choice Before long it acquired the right to collect the taxes and to administer justice throughout the whole area of Ben al Thus the Great Company expanded its activities from commerce to government From a trader in spices and dyes it became a ruler of territories thrones and destinies

HOW THE  
ANGLO-  
FRENCH  
CONFLICT  
DEVELOPED

INTRIGUES  
WITH NATIVE  
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THE OUT-  
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1763

## INDIA AND THE GREAT COMPANY

Up to this point the British government had assumed no direct share in the administration of India. It had merely given military aid to the British East India Company as part of its own war against France. But the powers and jurisdiction of the company had now become so extensive that some supervision by parliament seemed to be necessary. It is always unwise to leave the functions of trader and ruler unreservedly in the same hands. For when that is done there is likely to be more zest for profits than for good government. At any rate the operations of the British in India during the years immediately following the expulsion of the French showed how sinister an alliance between commerce and government can be for the East India Company overworked itself to turn the civil administration into an agency for enriching everybody except the people. Its officials levied indemnities and fines at discretion, piled up wealth for themselves and then came back to England where they bought seats in the House of Commons from the owners of pocket boroughs.<sup>1</sup>

There in the heat of partisan zeal they often shocked the conscience of the country by showering accusations of extortion and brutality upon one another. By these and other tales of corruption the public conscience in England was aroused and in 1776 parliament passed a general statute known as the Regulating Act which provided that a governor general appointed by the crown should be stationed at Calcutta with an appointive council to assist him. The governor and his councillors were to supervise the political administration of the territories within the company's jurisdiction while the company's own board of directors was left in charge of commercial and financial matters. Warren Hastings became the first governor general under the provisions of this Act.

But the provisions of the Regulating Act were found to be unsatisfactory for the respective powers of the two authorities were not clearly defined and much friction between the company and the

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governor general resulted. Eventually Hastings was recalled and impeached before the House of Lords but he was not convicted. The historian Macaulay in what is perhaps the finest essay ever written by an Englishman has vividly described the proceedings. The root of the trouble lay in an unworkable statute. The dual plan of royal and company government would not function. There was nothing to do but abandon it which parliament did by the passage of Pitt's India Act in 1784. This statute established in London a board of control consisting of several privy councillors with a president who eventually became secretary of state for India. It provided that all operations of the East India Company should be under the supervision of this board. Thus it established the complete supremacy of the crown in India. The office of governor general was retained but in order to avoid friction the appointment was now vested in the hands of the company. The company in other words was to govern India under the scrutiny of a board the members of which were appointed by the crown and responsible to parliament.

This system of administration turned out to be an improvement. It stood the strain of the Napoleonic wars during which the French attempted to regain a footing in India and with some changes it was continued down to the middle of the nineteenth century during which time large additions to the British territories in India were made. The authority of the native rulers was gradually reduced or even extinguished in favor of British jurisdiction. India seemed to be prospering under the rule of John Company. But in the teeming lands of the Orient the superficial appearances are often deceptive and there was more resentment brewing in India than the English officials realized.

In 1857 a widespread mutiny of native troops broke out suddenly and caught the company unawares. The English in India had built up a formidable engine of revolt through their policy of maintaining large bodies of Sepoy troops armed and drilled in European fashion. They had disregarded the axiom of statesmanship that it is never safe to arm a people whom you desire to hold in subjection. The situation in India prior to 1857 was placid on the surface but the British officials had no suspicion of what was going on underneath. The native troops were merely awaiting their opportunity to wipe the sahibs off the map.

PITT'S INDIA  
ACT (1784)

HOW IT  
FUNCTIONED

THE SEPOY  
MUTINY  
(1857)

## THE SEPOY MUTINY AND ITS AFTERMATH

A small spark will touch off an explosion when enough combustible vapor is at hand. The Indian mutiny was started by an incident of almost ridiculous inconsequence. This is the story in brief. The Enfield cartridges used by the Sepoy troops in their target practice were supplied from England. To protect them from dampness on the voyage they were enclosed in paper greased with animal fat. Before putting the cartridge in his rifle at target practice the native soldier was supposed to bite off this cover. Now it happens that to the Hindu the cow is a sacred animal and to the Mohammedan the pig is unclean. So no matter what the soldier's religion it was not difficult to convince him that by using greased cartridges he was committing a sacrilege. Agitators convinced the troops that the destruction of their ancient faith was the chief design of the whole procedure. On a given signal whole regiments mutinied, shot their officers and ran amuck. The restoration of the Mogul empire was proclaimed. The rising spread quickly from garrison to garrison and many British civilians as well as officers were shot down.

For a time it looked as though the day of European rule in India had come to an end. Fortunately for the English however the mutiny did not spread throughout the whole peninsula. India is too vast and too diversified an area to unite in a common cause and the mutiny was for the most part localized in the northwest provinces. Fortunately also an English military expedition was on its way to engage in a war with China. The British government promptly called off the Chinese war, sent a fast vessel to intercept the transports and diverted them to India. After some anxious months and with much hard fighting the mutiny was suppressed.

When the trouble was over public opinion in England insisted on finding a scapegoat as it does after all such mishaps. Everybody hastened to put the blame on the company. The existing scheme of government in India was assailed by all parties because it involved a delegation of political authority to a profit making corporation. People forgot for the moment that the company had built up a great empire from the nucleus of a few trading posts that it had been governing this territory for seventy years under royal supervision and that there was a credit

WHAT  
CAUSED IT

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as well as a debit side to its ledger. But the people of England were in no mood to accept alibis or explanations. They demanded that the whole system of British control over India be reconstructed. Parliament bowed to the clamor by decreeing that the East India Company should surrender its political powers and go out of existence.

In 1858 therefore the whole territory passed under the direct control of the crown.<sup>1</sup> India was henceforth to be governed by a viceroy appointed on the advice of the English cabinet.

THE ACT  
OF 1858

Provision was also made for continuing the secretary of state for India with rank as a member of the ministry.

The secretary of state was to be assisted by a council of fifteen members of whom the majority were to be persons who had lived in India. This Council for India was to hold its sessions in London. The Indian budget was to be voted by parliament. As for the East India Company, it was given a term of years in which to fit its commercial operations into the new political set up. As a promoter of commerce it had been a huge success in its day, but its governmental responsibilities had become too big for any company to carry.

India was governed under the Act of 1858 for a little over fifty years. The secretary for India served as a link between the crown

INDIA UNDER  
THE CROWN

and parliament on the one hand, between England and India on the other. His powers were limited to some extent by the necessity of acting in accord with

the Council for India of which he was the presiding officer. In India a viceroy appointed for a five year term by the crown on the advice of the prime minister was the head of the administration. He represented the Emperor of India, that is the British monarch as emperor. He was assisted by two councils, one executive and the other legislative. All the members of the executive council were Englishmen but the legislative council contained some natives. The legislative council had authority to make laws for India but all its actions were subject to the ultimate legislative power of the British government.

Under this scheme of government India came down into the twentieth century. A native population of nearly three hundred

RISE OF A  
DISSENT  
S. L. F.  
GOVERNMENT

millions allowed itself to be ruled by a few thousand Englishmen. The rest of the world wondered why. There were two reasons—the lack of unity among the people of India and theadrotness of the British

It was not until 1877 however that Queen Victoria was proclaimed Empress of India.

rulers These rulers were wise enough to refrain from interfering with the social and religious customs of the people The country during these fifty years gave the English no serious trouble Nevertheless there gradually developed especially among the educated natives a strong feeling that India ought to have a larger measure of self government

The reasons for this feeling are self evident to any American reader or ought to be They are essential elements of an old drama that has been played on the frontiers of civilization many a time No scheme of government however enlightened altruistic or benevolent has any chance of proving satisfactory unless it is founded upon the consent of the governed White men at various stages in history have undertaken to govern backward races of black brown and yellow men for their own good but if they have ever received one iota of gratitude for it the chronicles of history do not record the fact Government by the best people is not necessarily the best government As between misgovernment by themselves and good government by outsiders it is one of the perversities of human nature that people always choose the former

THE REASONS  
FOR IT

#### TOWARDS SELF GOVERNMENT

At any rate the desire for self government in India became more articulate during the closing years of the nineteenth century It found expression through the Indian National Congress an unofficial body of delegates collected from all parts of the country India like Ireland was fostering a home rule movement But it made little real progress until after the World War India might have given England a lot of trouble during this conflict but the country remained loyal in spite of German predictions that it would flame into revolt Not only that—India actually contributed an expeditionary force to aid the Allied cause This voluntary display of imperial patriotism made a favorable impression in England and gave rise to a feeling that India ought to be rewarded by the placing of greater confidence in her people

DA  
DURING THE  
WORLD WAR

Accordingly the British parliament enacted a new constitution for India in 1919 with provision for an Indian parliament but with a stipulation that in case of disagreement between this body and the viceroy the will of the latter should prevail A considerable

measure of local self government was also given to the various provinces of India but not enough to satisfy the leaders of the movement for home rule <sup>1</sup> Even in England the Act of 1919 was not regarded as a permanent solution of the problem but it served a useful purpose in carrying things along until a more comprehensive and better scheme could be devised

The Act of 1919 provided that at the expiration of ten years a commission should be appointed to inquire into the workings of the new government and to recommend any desirable changes In 1927 two years before the designated time such a commission was appointed under the chairmanship of Sir John Simon It visited India made exhaustive studies and presented a report to the British parliament in 1930 Among other far reaching changes the Simon commission recommended that the government of India should be reorganized on a federal basis Out of this report after prolonged discussions at round table conferences and by a parliamentary committee the Government of India Act of 1935 was framed and enacted

The new constitution does not alter the channels of connection between India and the United Kingdom The British king remains Emperor of India the secretary of state for India continues to be a member of the British ministry and serves as the connecting link between the two governments He is assisted by a small advisory council The British crown is represented in India by a viceroy or governor general who usually holds office for five years The selection of this high official is made by the British cabinet The capital of India was moved from Calcutta to Delhi in 1912 and the latter city will be the seat of the federal government under the new constitution

#### THE NEW CONSTITUTION

The provisions of this federal constitution for India are quite elaborate (the Act has 478 sections) hence only a very general outline of its most important features can be given here <sup>2</sup> Certain of these provisions become operative only when a designated number of the native states have declared their adhesion to the new plan But

For a summary of these provisions the reader may be referred to E. A. Horn *The Political System of British India* (London 1922)

It is printed in full with commentary in J. P. Eddy and F. H. Lawton, *India New Constitution* (London 1935)

THE GOV  
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(1919)

BRITISH  
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they may give a qualified adhesion provided their reservations are acceptable to the British government. The Act further provided that until a sufficient number of formal adhesions were received from the native states the old legislative chambers should continue in existence but with a new array of powers.

Geographically India is a unit politically it has been divided into provinces and native states. The new constitution is intended to establish a federal government for the whole peninsula.<sup>1</sup> Provinces and native states will be members of it any native state which does not join the federation at the outset will be allowed to come in later. The viceroy or governor general is appointed by the crown as heretofore but in exercising most of his functions he will act on the advice of a council of ministers who will be appointed by him as is done in the various British dominions. These ministers must be members of the legislature and presumably will be responsible to the house of assembly.

But in matters relating to defense external relations and a few other fields of jurisdiction the viceroy or governor general is to follow his own judgment aided by instructions from London and by the advice of counsellors whom he may choose without reference to the wishes of the legislature. Subject to approval by the secretary of state for India he is likewise authorized to follow his own discretion irrespective of the advice of his ministers in order to secure the preservation of order the safeguarding of the federal government's credit the protection of the rights of minorities the prevention of tariff discrimination against British imports and in a few other contingencies.

The federal legislature of India under the new arrangement is to consist (as now) of two chambers a council of state and a house of assembly. The council of state will have 156 representatives from the provinces all elected with the exception of six appointed by the governor general. Of the 150 elective seats one half are unrestricted the other half are allocated to special classes of voters (e.g. 49 to Mohammedans 7 to Europeans 6 to women 4 to Sikhs et c.) All elective members are chosen on a restricted suffrage. In addition the council of state is

A FEDERAL  
SYSTEM

THE  
GOVERNOR  
GENERAL  
COUNCIL

THE LEGIS-  
LATURE

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HOUSE  
COUNCIL OF  
STATE

<sup>1</sup> The position of Burma with predominantly non-Indian population, is not included in the federation but has been given a guarantee of its own.



to have members representing the native states but no state may be given more than five councillors. The total from these native states will be 104 if all the states come into the federation thus giving the council a maximum membership of 260. In each native state the method of selecting its quota of councillors is determined by itself. All members of the council of state are given nine year terms but one third of them retire triennially.

The lower chamber or house of assembly is allotted 250 members from the provinces and a maximum of 125 members from the native states. In each province there are general constituencies and (where their numbers warrant it) certain seats are reserved for Mohammedans Christians Europeans landowners workers women and other special classes. As respects the native states the representation in the assembly is roughly proportioned to population but the representatives are to be selected as each state determines. The term of assembly men is five years but the chamber may be dissolved by the governor general at any time.

Both chambers will meet every year. The assent of both is normally required for the enactment of laws but if they disagree the governor general after a stipulated period of delay and notice may convene them in joint session where a majority vote decides the issue. If the disagreement is upon a financial measure he may convene the joint session at once and he may also convene joint sessions forthwith in the case of a legislative deadlock on certain other matters. And when a bill has passed both houses the governor general may withhold his assent or may reserve the measure for consideration by the London authorities.

An interesting feature of the Act of 1935 is the provision that the governor general may make rules of procedure for the legislature on any of the following matters:—  
 (a) to secure the prompt consideration of financial measures to prevent the discussion of issues which are outside the legislature's jurisdiction and to shut off debates on questions which are wholly within the discretion of the chief executive. In an emergency moreover when the legislature is not in session the governor general may also issue ordinances, but these must be laid before the legislative chambers when they reconvene and if not ratified within six weeks the ordinances become

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not in session the governor general may also issue ordinances,  
but these must be laid before the legislative chambers when they  
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void As respects matters which fall within his own discretion (such as national defense or external relations) he may issue ordinances at any time and they remain valid for six months in any case or for a further six months if laid before the British parliament Provision is also made that in case the machinery of the federal government breaks down at any point the governor general may take over any power except that of the federal court but such action must be ratified by the British parliament within six months or it becomes invalid

What are the powers of the federal legislature? (As heretofore noted the Act of 1935 went into operation immediately as respects these powers but could not become effective as regards the reorganization of the legislative chambers until a sufficient number of native states had given adhesion) There is a detailed enumeration of (1) powers granted to the federal authorities (2) powers reserved to the provinces and (3) concurrent powers<sup>1</sup> More than forty federal powers are listed namely

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armed forces naval military and air force coins external affairs including the implementing of treaties and extradition ecclesiastical affairs currency coinage and legal tender public debt posts and telegraphs public services prison federal property certain museums and research institutions and surveys the census admission to and movements in India quarantine hospitals and exports railways control of vessels maritime shipping and navigation admiralty jurisdiction major ports fishing and fisheries beyond territorial waters aircraft and air navigation lighthouses carrying of passengers and goods by sea or by air copyrights invention designs in chandise marks and trade marks checks bills of exchange promissory notes arms firearms ammunition explosives opium petroleum trading corporations declaration of industry foreign declaration federal by a treaty insurance banking elections judicial office gainful work and powers given in the list duties of customs including export duties excise duties except on alcohol narcotic and non-narcotic drug and preparations on taxation of these substances position tax and control of the salt trade

It is understood that any native state adhering to the federation must agree to surrender the foregoing powers into the hands of the

<sup>1</sup> For a good discussion of the powers of the Federal Legislature see *Annals of the British Empire* (New York 1935) pp 566-572 also J. P. Eddy and F. H. Law *India and the Commonwealth* (London 1935)

federal authorities. In addition there are certain fields of jurisdiction which the native states may concede to the federal government or may retain for themselves as they see fit. These include such matters as lotteries, naturalization, weights and measures, stamp taxes and income taxes other than taxes on the income from agricultural land.

#### PROVINCIAL POWERS.

To the provinces are reserved power over

public order and justice, the jurisdiction and powers of courts, prisons, reformatories, provincial public debts and services, public works, libraries, elections, local government, public health and sanitation, pilgrimages within India, burials, education, communications subject to the federal powers, water and water rights, agriculture, land, forests, moors, fisheries, protection of wild birds and animals, gas and gasworks, trade and commerce within the province, including money lending, inns and innkeepers, production, supply and distribution of commodities and development of industries, adulteration of foodstuffs, intoxicating liquors, unemployment and poor relief, incorporation of companies not under federal power, theatres, betting and gambling, charities and charitable institutions, offences against laws dealing with any of these matters, and statutes in relation thereto. They deal also with land revenue, excise duties excluded from the federal list, taxes on income from agricultural land, on lands and buildings, hearths and windows, duties in respect of succession to agricultural land, taxes on mineral rights, capitation taxes, taxes on professions, trades, callings, on animals and boats, on the sale of commodities, on turnover, and on advertisements, cesses on the entry of goods into a local area, taxes on luxuries, including entertainments, betting and gambling, and stamp duties outside the federal sphere.

#### CONCURRENT POWERS.

Then there is a list of concurrent powers which includes

criminal law and procedure, civil procedure, evidence and oaths, marriage and divorce, infants and minors, adoption, wills, testaments, and succession save as regards agricultural land, transfer of property other than such land, registration of deeds, trusts, contracts, arbitration, bankruptcy, actionable wrongs, professions, newspapers and printing, lunacy, nautical deficiency, poisons and dangerous drugs, mechanically propelled vehicles and boilers, prevention of cruelty to animals, European vagrancy and criminal tribes, and jurisdiction of courts in respect of matters in the list. A further group of subjects includes factories, welfare of labour, health insurance, invalidity and old age pensions, trade unions,

industrial and labor disputes prevention of the extension into units of infectious or contagious diseases of men plants or animals electricity the sanctioning of exhibition of motion picture films etc

Each government (federal provincial and native state) must keep within its own sphere but in case of emergency the federal legislature with the assent of the governor general may step in and legislate on any provincial matter CONFLICTS  
OF POWER Such action however must be duly laid before the British parliament and there confirmed or it becomes void Nevertheless this power of federal intervention means that British control has been strengthened at the center If occasion arises it can effectively limit the extensive grants of power which have been made to the provinces Rules are also laid down to prevent conflicts as respects the concurrent powers of the federal and provincial authorities And certain matters are declared to be outside the jurisdiction of all Indian governments whether federal or provincial e.g. the supremacy of the crown the laws relating to British nationality and the rights of Britishers entering India or residing there More particularly the Indian legislatures are forbidden to penalize British subjects residing in India or doing business there by subjecting them to any discrimination under the laws

The Act of 1935 also recast the government of the provinces and this part of the statute went into force on April 1 1937 The dyarchy established by the Act of 1919 has been abolished and a large measure of responsible government is given PROVINCIAL  
GOVERNMENT to the provinces subject to the limitation mentioned in the preceding paragraph Each province has an appointive governor who acts on the advice of his ministers These ministers must have (or obtain) seats in the provincial legislature But as in the federal system the provincial governor may in certain cases act on his own judgment subject to control by the governor general Some of the provinces have a legislature of two chambers while others have only one Members of the legislature are elected on a suffrage which represents a great widening as compared with the rules laid down by the Act of 1919 Qualified voters in the pro

Dyarchy was the first step in the arrangement under which some of the provincial governments were made responsible to the provincial legislatures and some were not

vincial elections number about fifteen per cent of the population

Save for the powers which they surrender to the federal government upon joining the federation the native states remain as before.

THE NATIVE  
ST. TEX. Each retains whatever form of government its ruler and his legislative body (where there is one) may prefer. There are over 500 of these states, big and little with a total population of less than 80 000 000. The provinces, on the other hand contain a total population more than three times as large. Occasionally the British authorities have intervened to dethrone unworthy rulers in native states, but in general they have kept their hands off. Whether a majority of the states will come into the federation as contemplated by the Act of 1935 is as yet uncertain, although it is probable that they will do so.

INDIAN  
POLITICS. The new constitution goes a good deal farther than the old, yet like the latter it is a compromise. It does not go far enough to satisfy the Nationalist party in India and the leaders of this party have urged their followers to boycott the new provincial legislature. They argue that the Nationalist Congress their own All India convention of party delegates, is the only true representative body. They believe that the powers which are reserved to the crown the viceroy and the provincial governors, although designed mainly for use in emergencies, are broad enough to make Indian self government a sham if the British authorities use them freely. But there is no likelihood that they will be arbitrarily used so long as things go along with reasonable smoothness. That at any rate is the tradition of British rule in other parts of the world. The Nationalists however are inclined to see John Bull in a Machiavellian role.

It is quite true that the Act of 1935 does not provide dominion status for India. It does not grant self government, or responsible

GENERAL  
SCOPE OF  
THE  
CONSTITUTION. government, except to the provinces and even there the right of federal intervention exists if the need should arise. Through the overrepresentation of minorities and the large discretionary powers of the governor general, the supremacy of British influence in the federal government of India is thought to be assured. The native states are governed by autocratic hereditary rulers. Doubtless they will infuse a strongly conservative and therefore a pro-British element into both chambers of the legislature. All in all the Act of 1935 represents a continuance of the traditional British policy

which is to let her dependencies win self government step by step meanwhile watching the process with vigilance and care

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**THE ACT OF 1919 AND AFTER** On the political system established by the Act of 1919 there are several useful volumes notably Sir Courtenay Ilbert and Lord Meunier, *The New Constitution of India* (London 1933) B. G. S. P. S. P., *The Growth of the Indian Constitution and Administration* (Sanli India 1924) E. A. Hume, *The Political System of British India* (London 1927) D. N. Banerji, *The Indian Constitution and Its Actual Working* (London 1926) and Sir T. B. Sapru, *The Indian Constitution* (Madras 1926). J. Ramsay MacDonald's book on *The Government of India* (London 1919) deals largely with conditions prior to the establishment of the new political system, but contains excellent chapters on such topics as the protected states, the Indian civil service, the administration of justice and the rise of nationalism.

**THE ACT OF 1935** The best general summary is the one given in A. B. Keith, *Governments of the British Empire* (New York, 1935) pp. 544-601. A more extensive analysis is printed in J. P. Eddy and F. H. Lawton, *India's New Constitution* (London 1935). K. V. Punniah, *India as a Federal* (Madras 1936) G. N. Joshi, *The New Constitution of India* (London 1937) and N. Ganguli, *The Making of Federal India 1911-1935* (London 1936) also deserve mention.

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## CHAPTER XXI

### BRITISH DOMINIONS AND COLONIES

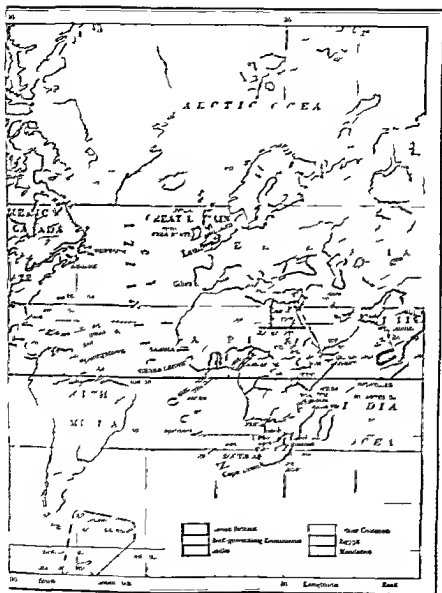
It would be performing more than can reasonably be expected from human sagacity if any man or set of men should always decide in an unexceptionable manner on subjects that have their origin thousands of miles away from the seat of the imperial government — *Lord Durham.*

The British empire or British commonwealth of nations as it is now called comprises more than one quarter of the habitable surface of the globe. Its total population is nearly half a billion of which India contributes about two thirds. Now the entire population of the world is estimated to be less than two billions hence one person out of every four on the earth's surface is a British subject. The world has never before seen such a far reaching and heterogeneous political aggregation. Writers have compared it with the empire of ancient Rome but the two have no significant features in common. The British imperial commonwealth of today bears no resemblance to anything that has ever existed or ever been tried. In its extent its diversity and its loose political organization it is a unique phenomenon.

This British commonwealth of nations consists of territories in all six continents. In Europe there are the British Isles including Ireland the Isle of Man and the Channel Islands together with Gibraltar Malta, and Cyprus. In North America there is the Dominion of Canada (with its nine provinces) together with Newfoundland Jamaica and various other islands in the West Indies. In Central and South America there are British Honduras British Guiana and the Falkland Islands. In Australasia there are the Commonwealth of Australia (with its six states) the Dominion of New Zealand the crown colony of New Guinea and various South Pacific islands. In Africa the British territories include not only the Union of South Africa (with its four constituent states) but Rhodesia Nigeria Sierra Leone Gambia Uganda Kenya and Zanzibar together with various other colonies protectorates and mandated territories. The Sudan is nominally under the joint control of Great Britain







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and Egypt but since 1924 Britain has assumed the major jurisdiction over this vast area

In Asia the Indian empire including the protected states is the most important member of the British commonwealth but Ceylon the Straits Settlements the Malay States Sarawak North Borneo and Hongkong are also included within the list of British territories Palestine and Iraq (Mesopotamia) are likewise for the moment at any rate under British supervision Egypt before the outbreak of the World War was technically a part of the Turkish empire but virtually under British suzerainty When the Turks cast in their lot with the Germans the British government declared a protectorate over Egypt and this status continued until some years after the close of the World War when a series of Anglo Egyptian agreements conceded to Egypt the rank of an independent state subject to various reservations<sup>2</sup>

The growth of Greater Britain is one of the epics of history yet it was not planned or premeditated Rather it was accomplished in a prolonged fit of absent mindedness England expanded without a policy of expansion A commercial and industrial nation by reason of geographical good fortune she naturally became a maritime and naval power Her merchants traded to distant lands her people made settlements there and her navy as able to protect them It was not the British government that created the empire it was the British people The great exodus of English men was not inspired or encouraged by the government In English colonization the trader and the emigrant went first the government came lumbering along in the rear Someone has said that the British empire was conquered by the Irish in order that it might be governed by the English for the benefit of the Scotch That remark is too laconic to be literally true yet it points to the fact that all three races have taken a hand in discovering conquering governing and exploiting this vast dominion over palm and pine

NATURE  
OF THE  
MIDDLE  
EAST  
VELOC-  
ITY

#### THE OLD AND NEW BRITISH EMPIRES

Historically the growth of the overseas empire falls into two general periods The first extended from 1600 (when the British East India

<sup>2</sup> See below p. 392, note

These are only the most important items in the list. The main ones are also shown in the accompanying map.

Company was organized) down to 1783 when the Treaty of 1783 recognized the independence of the United States. During this era of nearly two centuries Great Britain conquered Canada from France, secured for her traders a free hand in India, and founded thirteen colonies along the Atlantic seaboard. The loss of these

THE TWO  
GREAT  
ERIODS OF  
BRITISH  
BUILDING

colonies was a seemingly irreparable disaster to the imperial cause, but it taught the British government some lessons that proved to be worth the cost. These lessons were turned to useful account during the second period (from 1783 to the present day) in which an even more extensive range of territories has been acquired. The later acquisitions have been made in a variety of ways—by discovery and colonization (as in Australasia), by conquest (as in Africa), and by the peaceful expansion of territories in which a foothold had already been acquired (as in Canada and India). The British commonwealth of today is vaster in extent and more populous than the one which was rent asunder by the American Revolution.

The American Revolution is the most conspicuous landmark in the history of Greater Britain. It closed one era and opened another.

THE  
AMERICAN  
REVOLUTION  
AS A  
DIVIDING  
POINT

It taught the mother country a lesson, as has been said, but not the lesson that most Americans would have expected England to learn from the happenings of 1776-1783. There is no basis for the common belief that the American War of Independence impelled Britain to give her remaining colonies a full measure of political freedom. The colonies which did not revolt but remained within the empire obtained no substantial concessions in the way of self-government as an outcome of the Revolutionary war. Their political organization stood unaltered; their governors continued to be appointed from London and remained independent of colonial control. No British colony received a full measure of self-government for more than a half century after the founding of the United States. The struggle for self-government had to be fought over again, as it was in Canada during the years 1835-1840.

The lesson which Great Britain did learn from her experience with the thirteen American colonies, however, was in relation to the control of trade. Therein the British authorities rightly interpreted the underlying causes of the Revolution. It was a series of economic grievances that led the American colonists to rebel. No doubt

WHAT BRITAIN  
LEARNED  
FROM THE  
REVOLUTION

there were some political grievances also but these could probably have been remedied without an armed revolt. The American colonists did not take up arms because they wanted their governors to be responsible to the legislature or because they desired manhood suffrage. They did not endow themselves with these things after the Revolution. What they resented was British interference with their trade and economic life. The British government when the Revolution was over appreciated the force of this grievance and the remaining colonies were treated with a new liberality in matters of trade.

It was in this sense that the American Revolution paved the way for the upbuilding of a new British empire. It sounded the death knell of the Navigation Acts. It gave a body blow to the whole mercantilist doctrine. As between economic self-determination and political self-government the former is the more important although both logically go together. And Great Britain has now given both types of freedom to her dominions. Ireland, Canada, Australia, New Zealand and South Africa are to all intents self-governing nations. By the Statute of Westminster they have been given virtually complete autonomy. The length to which a dominion may go and still keep within the terms of this statute is demonstrated by the new Irish constitution.

But the British imperial commonwealth does not entirely consist of dominions. In it there are political entities of several other types including some that are almost impossible to classify.

There are colonies of various sorts: protectorates, protected states, mandated territories and condominiums. There is British India—in a class by itself.

These territorial units of government are racially as diverse as it is possible for a far-flung empire to be. They comprise great areas with populations almost entirely of European birth or descent such as Canada and Australia. In others such as the Union of South Africa the dominant races are of European ancestry but there is also a large native element. Throughout the greater portion of the empire the native races far outnumber the Europeans. With this polyglot diversity in race, language, religion, law, economic interests and social traditions it is not surprising to find that no two parts of the British commonwealth are governed exactly alike.

## BRITISH POSSESSIONS CLASSIFIED

In a broad way<sup>4</sup> however all the territories in British connection (apart from the United Kingdom the Channel Islands the Isle of Man and Northern Ireland) may be arranged under eight principal heads

**1 SOUTHERN IRELAND** *First* there is Southern Ireland under the new Irish constitution. From a reading of this remarkable document one would get no inkling of the fact that the territory which has been known as the Irish Free State is within the British commonwealth of nations at all. Not a single reference to British connection appears in it. The succession of George VI was not proclaimed in Southern Ireland. But the new constitution does not and cannot alter the terms of the Anglo-Irish Treaty (1921) which specifically provides that Southern Ireland shall remain within the community of nations forming the British commonwealth of nations. Southern Ireland it would seem has gone beyond dominion status and has become a republic associated with the other members of the British commonwealth but not united with them by a common allegiance.

**2 THE DOMINIONS** *Second* there are the various self governing dominions<sup>1</sup>. These are Canada Australia New Zealand and South Africa. New foundland temporarily gave up her dominion status in 1933.<sup>2</sup> **3 INDIA.** *Third* there is British India which has been given a special status under the Act of 1935 as has already been explained. **4 SEMI AUTONOMOUS CO. ONIES** *And fourth* there are various territories which rank as partly self governing colonies. Southern Rhodesia and Malta for example have

*The Union of South Africa has gone farther than the other dominions in its assertion of political autonomy but continues the royal allegiance.*

New foundland ranked as one of the dominions in the British commonwealth until 1934. Owing to financial difficulties due to a heavy debt and declining revenues the Newfoundland government appealed to the mother country for help. In 1933 a royal commission and the chairmanship of Lord Amulree investigating the situation and as an outcome of its findings the British government was requested by the Newfoundland legislature to pass an act suspending the Newfoundland constitution and making the island for the time being a dependency of the United Kingdom. This action was without precedent in the history of British colonial expansion. Today Newfoundland is being governed by a commission of advisers experts appointed by the British crown. It is engaged in rehabilitating the island finances of forming its administrative arrangements and setting a sound system of local government. Success has

been given a very large measure of self government, but have not yet attained the status of dominions

Under a *fifth* heading may be grouped various dependencies which have only a limited measure of colonial autonomy their general administration being under control from London Some of these colonies, however have their own legislatures the upper chamber of which is appointive and the lower chamber elective (Bermuda the Bahamas and Barbados) Some have legislative councils of a single chamber in which there are both appointive and elective members In some of the latter (Ceylon Cyprus and Jamaica) the elective members form a majority in others (Hongkong Nigeria, and Trinidad) they do not A few (including Gibraltar Ashanti, and Basutoland) have no legislative councils at all

5 CROWN  
COLONIES

In a *sixth* category may be placed the protectorates such as North Borneo and Sarawak which are independent and self governing as respects their own internal affairs but whose foreign affairs are controlled by Great Britain Somewhat akin are the protected states in India which, although technically independent under native rulers are kept under supervision by British ministers-resident A *seventh* group of territories in which British influence prevails includes what are known as mandated territories

6 PROTECTORATES

7 MANDATED  
TERRITORIES

These are governed in trust from the League of Nations either directly by Great Britain as in the case of Palestine<sup>1</sup> or by one of the self governing dominions as in the case of Western Samoa where the mandate is held by New Zealand Iraq was given to Great Britain as a mandated territory at the close of the World War but this arrangement did not prove satisfactory Accordingly a treaty was concluded between Great Britain and Iraq whereby the latter became an independent state but with the British retaining a guarantee of certain rights and privileges there In 1932 Iraq became a member of the League of Nations

Finally under an *eighth* heading there are some territories which

tended its efforts to such an extent that Newfoundlanders are now satisfied that they are out of deep water and are asking to have their old form of government restored.

<sup>1</sup>The proposal has been made to divide Palestine into three parts, namely an independent Arab state (to the south) an independent Jewish state (on the coast to the north) and a continued British mandated territory which would include Jerusalem, with corridor to the sea.

do not come within any of the foregoing categories. The Egyptian Sudan is neither a dominion, a colony, a protectorate, nor a mandated territory. It is technically a condominium, an area governed by Great Britain and Egypt jointly. The New Hebrides are held under a condominium with France. Egypt herself is an independent kingdom, so recognized by Great Britain, but by an agreement whereby the British retain certain important privileges—for example, the right to keep troops in Egypt for the protection of the Suez Canal and of access through Egypt to the Sudan. These privileges, while not incompatible with Egyptian independence, obviously give Great Britain about as much hold upon Egypt as she now has upon Southern Ireland.

These various political entities within British connection may now be considered in somewhat greater detail. The government of Ireland, in its two divisions, has already been outlined. The various dominions had gained their self-governing position long before the Statute of Westminster was enacted by the British parliament in 1931, but this famous enactment not only gave their status official recognition but assured them various additional rights.<sup>1</sup>

The Statute of Westminster, which has been termed the Magna Carta of the British dominions, includes three important provisions.

In the first place it stipulates in its preamble that inasmuch as the crown is the symbol of the free association of the members of the British commonwealth of nations, it would be in accord with the established constitutional position of all the members

of the commonwealth that any alteration in the law touching the succession to the throne shall hereafter require the assent of the parliaments of all the dominions as well as of the British parliament.<sup>2</sup> Second, it provides that no law passed by a dominion parliament may hereafter be held invalid on the ground that it is repugnant to the laws of the United Kingdom or to any future act of the British parliament. Until 1931 it was the privilege of the crown to veto or disallow on the advice of the British cabinet any dominion statute. Such action

<sup>1</sup> For the text of the statute with a commentary on each of its provisions, see R. P. Mahaffy, *The Statute of Westminster 1931* (London, 1932).

<sup>2</sup> As this stipulation appears in the preamble only and not in the body of the statute, its legal force is doubtful.

was not common but the power was there. It has now disappeared. The governor general in each of the dominions still gives the royal assent to acts passed by the dominion parliament but like the king in Britain he gives it as a matter of course.

Third the Statute of Westminster provides that no law passed by the British parliament shall apply to any of the dominions except in cases where the dominion parliament has requested and consented to such legislation. More over any British statute or regulation now existing in any of the dominions can be repealed or amended at will by the parliament of the dominion concerned. In other words any British dominion except Canada and Australia can now by its own action repeal or amend a constitution given to it by the British parliament. It is under this provision of the Statute of Westminster that Southern Ireland has revamped its constitution and virtually taken itself out of the list of British dominions. In the case of Canada and Australia the various provinces and states which are included in these two dominions are deemed to have an interest in the division of powers between themselves and the federal government which is established by their existing constitutions. Hence it would not be equitable to permit their federal parliaments to amend these constitutions at will to the detriment of existing provincial or state rights.

The Statute of Westminster does not provide that the governor general of a British dominion shall be chosen locally but it was agreed at the imperial conference of 1930 that the king in appointing a governor general for any dominion would hereafter be guided by the advice of the ministry in that dominion not by his cabinet in London. Moreover the statute does not abolish the system of appeals to the judicial committee of the privy council in London but leaves such dominion free to continue this system if it chooses to do so or to abolish it if so desired.

#### CANADA

Each of the self governing dominions has a constitution or what is the equivalent of a constitution in other words a comprehensive act of parliament on which its government is based. Canada is the most populous of these dominions. By the census of 1930 it had about ten million people which is not much more than the population of Penn-

THE DOMINIONS  
A. A.  
The arrangements now existing as respects such appeals see pp 307-309



sylvania About one third of the people are of French descent, for the older sections of Canada were originally settled by colonists from France

The Dominion of Canada was established in 1867 under the provisions of the British North America Act which (with various amendments) still serves as a federal constitution

**ITS CONSTITUTION** It was framed by a conference under the leadership of Sir John A Macdonald who drew much of his political philosophy from Alexander Hamilton If Macdonald was the father of the Canadian constitution Alexander Hamilton is entitled to be called its grandfather For some highly important features of federal government which Hamilton presented to the Philadelphia Convention in 1787 but which failed to gain favor there were incorporated by Macdonald into his draft of the British North America Act <sup>1</sup>

There are three reasons why American students should know something about the governmental system of Canada Geographical

**ITS INTEREST TO AMERICAN STUDENTS.** proximity begets interest or should do so—and Canada is nearby In the second place the political problems of the two countries are fundamentally alike although the attempt has been made to solve some of them in quite different ways Finally although Canada is a member of the British commonwealth her political institutions and life are being heavily influenced by the United States One might perhaps, generalize by saying that in the government and political life of Canada most of what has been superimposed is British but most of what has worked in from the bottom is American This is especially true of party organization and practical politics

Under its present constitution the government of Canada bears some resemblance to that of the United States in that there is a

**ITS GENERAL NATURE** formal division of powers between the federal and the provincial governments Matters of nation wide importance are placed within the jurisdiction of the

dominion authorities while those of a local character are left to the provincial governments The British North America Act of 1867 like the Constitution of the United States contains a definite enumeration of these powers but in one essential feature the two documents stand in contrast In the United States all powers not

See the author's *American Influence in Canadian Government* (Toronto 1929) especially pp 18-22

definitely granted to the federal government remain with the states in Canada all powers not definitely reserved to the provinces go to the central government. This difference however is not so great as it might appear to be. In the United States the courts by judicial interpretation have strengthened the federal government at the expense of the states in Canada they have strengthened the provincial governments at the expense of the dominion. The balance of authority is therefore not widely different in the two countries.

The titular chief executive in Canada is a governor general appointed by the crown for a five year term. The appointment has always gone to a member of the British nobility. The governor general performs substantially the same duties as those imposed upon the king in England.

THE  
GOVERNOR  
GENERAL.

He summons and dissolves the dominion parliament, gives the assent of the crown to legislative measures and makes appointments to office—all on the advice of his ministers. These ministers are responsible to the Canadian House of Commons. Canada maintains a high commissioner in London as a medium of communication with the imperial government. She also maintains her own minister in Washington and communicates with the state department through him, not through the British ambassador.

The Canadian political system closely follows the English mode in providing for a responsible cabinet. This cabinet is chosen as in England by a prime minister whose responsibility to the House of Commons is exactly the same as at Westminster. So the real chief executive of the dominion is not the governor general but the prime minister who is invariably the leader of the majority party in the Canadian House of Commons. Each member of the cabinet must have a seat in the Canadian parliament and the whole cabinet must resign as in England whenever it loses the confidence of a majority in the House.

THE CABINET

The parliament of Canada consists of two chambers a Senate and a House of Commons. Not having a peerage (and having no desire to create one) it was impracticable to model a Canadian Senate on the British House of Lords. Nor was it thought advisable to follow the example of the United States to the extent of having senators chosen by the various provinces.<sup>1</sup> It was decided therefore that the Canadian Senate

THE  
DOMINION  
PARLIAMENT

<sup>1</sup> It will be remembered that at the time the Canadian constitution was being formed (1867) the United States Senate was not regarded as a striking su-

should be composed of 96 members appointed for life by the governor general on the advice of the prime minister. Alexander Hamilton by the way had urged in 1787 that the United States Senate ought to be composed of members appointed for life. Twenty-four Canadian senators are appointed from each of the four regional areas of the dominion—Ontario, Quebec, the Maritime provinces and the Western provinces.

Like the Senate of the United States the Canadian upper chamber has concurrent legislative power with the lower house except as regards money measures. There is no provision in THE CANADIAN SENATE Canada as in Great Britain for solving a deadlock between the two chambers by having the Commons reenact a measure three times. When the Canadian Senate rejects a bill which has passed the House of Commons there is no way of making the will of the latter prevail. In practice however important measures have not often been rejected. The Canadian Senate has virtually accepted the doctrine that under ordinary conditions the House of Commons ought to take the chief responsibility for law making and that its own work should be confined to the revision and perfecting of bills sent up to it. The Senate therefore plays no vital part in the government of the dominion. It does not share in the control of the cabinet. Its influence in Canada is certainly no greater and on the whole it is probably less than that of the House of Lords in Great Britain. All sorts of proposals have been made to reform and even to abolish the Canadian Senate but thus far none of them has found much favor.<sup>1</sup>

The Canadian House of Commons bears a close resemblance to the American House of Representatives. Its members are elected from parliamentary districts or constituencies—one from each. These constituencies are approximately equal in population and redistricting takes place (as in the United States) after every decennial census. The total membership of the House of Commons at the present time is 234.<sup>2</sup>

<sup>1</sup> There is a widespread feeling that the equal representation of the states in the Senate had helped to make a peaceful settlement of the slavery issue impossible.

<sup>2</sup> On the organization and powers of this chamber the best book is Robert A. Mackay *The Unreformed Senate of Canada* (Oxford 1926).

The Canadian constitution provides an ingenious safeguard against substantial increases in the size of the House of Commons as has taken place in the American House of Representatives. The quota of members from the Pro-

The maximum term during which a House of Commons may sit is five years but the House may be dissolved at any time by the governor general on the advice of the prime minister. Such dissolutions however have been less frequent than in England.

As respects the suffrage any British subject twenty-one years of age or over male or female is entitled to vote after one year's residence in Canada provided he (or she) has resided in the constituency for two months. And any qualified voter may become a candidate for election.

HOW ITS  
MEMBERS ARE  
ELECTED

There are no primaries for the selection of candidates as in the United States. Nominations are made in each constituency by party conventions. The voting is by secret ballot and the ballots bear no party designations.

In Canada as in England the House of Commons is the real pivot of legislative power. It controls the cabinet. All financial measures must originate in the House and as a matter of practice most other measures originate there also.

ITS POWERS

Bills are introduced referred to committees debated and voted upon and then go to the Senate for concurrence. A distinction is made as in the mother of parliaments between public and private bills. There is a speaker but the English tradition of reelecting him to his office so long as he remains a member of the House is not followed in Canada. When a new government comes into power it elects a speaker from its own ranks. The standing rule of the British House of Commons that no proposal to spend public money shall be considered unless it is introduced in the name of the crown (that is by a member of the cabinet) has been adopted in Canada and this gives the cabinet a large measure of control over the whole field of public finance.

Political parties exist in Canada as in all other countries having free government. In nomenclature the Canadian parties resemble those of Great Britain but in their organization and methods they are much more nearly akin to those of the United States. The two major parties call themselves Conservatives and Liberals but there are several minor parties as well. The Liberals are now in power. But as in England

POLITICAL  
PARTIES IN  
CANADA

since 1867 Quebec is permanently fixed at 65 the other provinces are entitled to a quota as their respective populations warrant according to the Quebec Act. In Nova Scotia for example with about one quarter of the population of Quebec has 16 members.

the names of the political parties give no real clue to their respective attitudes on matters of public policy. The differences between them, such as they are, do not relate to the fundamentals. The constitution of Canada ignored the existence of political parties and the laws for the most part continue to treat them as wholly outside the *mechanics of government*. But their influence on the course of public policy is as great as in England or the United States.

Canada is a federation of provinces of which there are now nine in all.<sup>1</sup> Each of these nine provinces has its own provincial government consisting of a titular chief executive who is called lieutenant governor, a provincial prime minister and cabinet, and a provincial legislature. The lieutenant governor is appointed for a five year term by the governor general on the advice of the federal cabinet. The position of lieutenant governor carries no personal authority inasmuch as all official acts are performed in accordance with the advice of the provincial cabinet which in turn is responsible to the legislature. The legislature which consists in seven provinces of a single chamber is elected by universal suffrage.<sup>2</sup> Party lines are substantially the same in provincial as in federal politics.

#### AUSTRALIA

In point of population Australia comes next among the self governing dominions. The island became a British possession by discovery and settlement early in the nineteenth century. It was at first deemed to be of little value and was used as a penal colony. In time however colonies of free settlers and of liberated prisoners were established in different parts of Australia and these colonies were given a system of partial self government which eventually widened into complete autonomy. There were six of these colonies and various attempts were made during the last half of the nineteenth century to unite them into a federation but the project did not succeed until 1900 when the Commonwealth of Australia was established by action of the British parliament at the request of the colonial governments. The constitution of the commonwealth was ratified by the people.

Ontario, Quebec, Nova Scotia, New Brunswick, Prince Edward Island, Manitoba, Saskatchewan, Alberta, and British Columbia.

In Quebec and in Nova Scotia there are two chambers—legislative council and legislative assembly both elected.

and it cannot now be changed except by the assent of a majority of the voters in a majority of the states.

In general the government of the Australian commonwealth somewhat resembles that of Canada although there are a few important differences. A governor general and a federal cabinet form the executive branch of the government. The governor general is appointed by the British crown on the nomination of the Australian cabinet. There is a parliament of two chambers called the Senate and the House of Representatives. But the Australian Senate like that of the United States, is based upon the principle of state equality. It consists of thirty-six senators—six from each state irrespective of population. And the senators are elected, as in America, by state-wide popular vote. The Australian House of Representatives also follows the American model in that it is comprised of members elected from districts which are approximately equal in population, one from each. Universal suffrage has been established throughout the commonwealth. Each of the six Australian states also has its own government, which in a general way is similar to that of a Canadian province. But in apportioning powers between the federal and provincial governments the Australian constitution reserves to the states all powers not definitely given to the central government.<sup>1</sup>

GENERAL  
STRUCTURE OF  
ITS GOVERNMENT

#### SOUTH AFRICA

The Union of South Africa consists of four provinces (Cape Colony, Natal, the Transvaal, and the Orange Free State) which were united in 1910. This union differs from the federations of Canada and Australia in that it does not rest upon an enumerated division of powers between federal and provincial authorities. The South African constitution gives virtually full and complete authority to the Union parliament. But it reserves some jurisdiction to the provinces and also provides that the Union parliament may delegate to the four provincial governments such powers as it sees fit. In any event all laws enacted by the provincial governments must have the approval of the Union authorities before they become valid. The South African Union therefore is a federation in form only. It is the sort of federation that Alexander Hamilton would probably

THE UNION OF  
SOUTH AFRICA

<sup>1</sup> The best concise description of Australian government is that given in Lord Bryce *Modern Democracies* (London, New York, 1911) Vol. II, pp. 166–164.

have established in America if he had been given his way in 1787

The South African government consists of a governor general, a cabinet and a bicameral legislature. The Senate is made up of forty members eight chosen by the legislative council of each province and eight appointed by the governor general on the advice of his cabinet—all for ten year terms<sup>1</sup>. The lower chamber or House of Assembly is made up of members elected from single districts. Each of the four provinces is governed by an administrator who is appointed by the governor general and an elective legislative council.

#### OTHER OVERSEAS POSSESSIONS

It would take a whole volume to describe the government of those British territories which have a large amount of self government but not a full measure of it. Southern Rhodesia for example enjoys virtually full autonomy except for certain restrictions placed upon its government in the interest of the native population. Malta has full self government except as regards certain reserve matters such as defense, coinage, external trade and immigration. In Jamaica the elective representatives of the people control the legislative branch of the government but do not control the executive. British Honduras, another colony in the Western hemisphere, has a legislative council in which the representatives of the people do not constitute a majority and St. Helena (famed as the last home of Napoleon) has no legislative council at all. From Canada to St. Helena, therefore, the various territories run the whole gamut of colonial government with all degrees of self determination and democratic control. But whatever the measure of home rule or the lack of it, British suzerainty has always aimed at the protection of the native races, the abolition of slavery, the reign of law, the maintenance of order and the training of the people in the art of government.

Britain has many protectorates and in such territories there is sometimes a great gulf between theory and fact. Ostensibly a protectorate is not subject to control as regards its own internal affairs; it is controlled only as respects its foreign relations. But the fact is that internal affairs and foreign affairs cannot always be sharply differentiated and the

It may be felt that mention of the fact that appointed senators have been named to represent the Indian population

protecting country always gives itself the benefit of any doubt in the matter. Its minister resident or resident general or whatever he may be called acquires the habit of tendering advice to the native rulers on all manner of problems both internal and external. He becomes to all intents the directing factor in the government of the protectorate. The status of a protectorate is not usually permanent often it is merely a prelude to annexation but it has sometimes ripened into independence.

Protectorates should not be confounded with spheres of influence. A sphere of influence is a backward area in which the interest of some civilized state has become recognized as paramount. When two European countries find themselves engaged in rivalry for the exploitation of some undeveloped territory and drifting into open rupture because of the rivalry they try to reach an agreement dividing the territory into spheres so that each of the exploiters may keep from interfering with the other. Prior to the World War for example Great Britain and Russia agreed to delimit spheres of influence in Persia. As respects countries which are not immediately concerned these agreements have no binding force. They depend for their validity upon the power of the countries which acquire the spheres of influence. Nor do such agreements establish any rights of sovereignty although the dominant country sometimes imposes a directing hand on the political affairs of the territory in question.

Mandated territories offer a new complication to the student of colonial government. At the close of the World War there arose the question as to what disposal should be made of the former German colonies and of certain territories belonging to the old Turkish empire. At the end of previous great wars such territories had generally been divided among the victors. In 1919 however it was felt desirable to try some new plan which would be more in keeping with the high principles of altruism which the victorious Allies professed. So it was agreed in the Treaty of Versailles that the territories wrested from Germany and Turkey should be handed over to the League of Nations on the understanding that each should be administered on behalf of the League by one of its member countries. Mandates for the government of the various territories were thus awarded to the victorious countries to Great Britain and France particularly. The United States was offered a mandate for Armenia but declined.



it The mandatory or country holding the mandate is in the position of a trustee for the League of Nations to which it reports periodically The future of these mandated territories is obviously bound up therefore with the continuance of the League <sup>1</sup>

### IMPERIAL CONTROL

In principle the British parliament has supreme and unfettered power over all British territories no matter what their status.

THE SUPREMACY OF PARLIAMENT It is not permanently bound by the provisions of constitutions which it has granted to Canada, Australia and other dominions As a matter of constitutional theory the British parliament has the right to repeal any of them at its discretion As a matter of fact on the other hand it would not venture either to repeal or amend the organic law of any self governing dominion save on request from the government of that dominion itself So here we have once more an illustration of the wide divergence which exists between the law and the usages of British government Parliament retains the fiction of complete supremacy for it could repeal the Statute of Westminster but in the case of the dominions has surrendered the entire substance of legislative power

The London government deals with the overseas British territories through three ministerial offices The secretary of state for

THE CHANNELS OF IMPERIAL COORDINATION India is the main channel of communication for that empire including the protected states The secretary of state for dominion affairs has immediate charge of relations with the self governing dominions and with Southern Rhodesia He has also served as the medium of communication with the government at Dublin The secretary of

Palestine is held under a mandate granted by the League of Nations This mandate imposes upon Great Britain the duty of making such political and administrative arrangements as will assure the establishment of Jewish national home the development of self governing institutions, including local self government, and the protection of all civil and religious liberties Under this mandate Great Britain has appointed a high commissioner for Palestine He assisted by an appointed council There is also a legislative council in which a majority of the members are indirectly elected by the people

Mesopotamia (Iraq) was also placed under a League mandate Britain but the people of the former country made a strenuous objection to this arrangement Hence an alliance was concluded between the two governments Under the terms of this agreement Great Britain is to render direct and assistance without impairing the independence of Mesopotamia This agreement has been accepted by the League of Nations in lieu of the earlier provision

state for the colonies takes care of all the rest including the protectorates the mandated territories and the condominiums All three secretaries of state are members of the British cabinet As heads of their respective departments they go out of office whenever a new cabinet comes in but their subordinate officials are permanent Hence a change in ministry does not involve any appreciable shift in colonial policy because the broad outlines of imperial connection are accepted by the nation as a whole and are not in the main a theme of party controversy

The self governing dominions maintain in London officials who are known as high commissioners and some of the provinces or states maintain agents-general there also These officials who are appointed and paid by their respective governments have functions which are chiefly of a commercial character but they are also utilized by their own governments in dealing with the imperial authorities Their functions are steadily becoming more diplomatic in character Some of the dominions also maintain agents in other countries These agents virtually serve as ministers or consuls although they are not members of the British diplomatic or consular service

THE REPRESENTATION OF THE DOMINIONS IN LONDON

This raises the question whether a treaty can be made between one of the self governing dominions and a foreign state Is Canada for example an independent country to that extent?

The answer is that although the treaty making power is ordinarily exercised through the British government, there is nothing to prevent the making of treaties by the dominions, and at least one important treaty has been concluded between Canada and the United States without the intervention of any British official

THE MATTER OF TREATIES.

During the early Victorian period about the middle of the nineteenth century there was a widespread feeling in Great Britain (especially among the Whigs and Liberals) that distant colonies like Canada Australia and South Africa were of dubious value to the mother country They claimed the protection of the British army and navy they drew the home government into their quarrels they desired all the advantages but would give nothing in return They were like ripe fruit as Turgot once said that would fall from the parent tree whenever they had grown to maturity

ENGLISH SENTIMENT IN RELATION TO THE EMPIRE

It was taken for granted by many Englishmen that the bestowal of self government would be merely a stepping stone to independence. In the course of time however this pessimism began to disappear and Englishmen commenced to think in terms of imperialism. This new ardor brought forth a school of imperialistic writers,—writers of history and poetry such as Sir John Seeley and Rudyard Kipling. They wrote and sang about the romance of England's expansion, her dominion over palm and pine, her far flung battle line and her shouldering of the white man's burden.

In 1887 on the occasion of Queen Victoria's first jubilee representatives of all the dominions and colonies were summoned to London and in an atmosphere of festivity a series of conferences between these representatives and the home government were held. The project of an all-empire council or parliament was cautiously broached but nothing came of it. Ten years later at the Diamond Jubilee of 1897 there was another conference and more discussions likewise with no tangible results. Far called the navies melted away the captains and the kings departed the colonial prime ministers sailed for home and the dream of an imperial federation remained a dream. It was suggested however that such conferences should be called from time to time to discuss problems of imperial interest.

This suggestion was adopted and the imperial conference has now become an established institution. It ordinarily meets every four years but may be specially summoned at any time such as a royal coronation. It has a permanent secretariat in London. At these conferences the prime minister of Great Britain presides. The other members are the secretaries of state for the dominions for the colonies and for India the prime minister and one or more other representatives from Canada Australia South Africa and New Zealand together with certain representatives from India—making more than twenty members in all. The imperial conference has no constitutional powers its function is merely to deliberate upon matters affecting Great Britain as a whole and to secure informal agreements as to common action. It cannot bind any government. But its importance has grown steadily its resolutions are of significance to the widely scattered areas concerned and it may be looked upon as a factor in imperial administration. The latest conference was held immediately following the coronation of George VI in 1937.

On one recent occasion moreover an imperial economic conference has been held. This was at Ottawa in 1932. Attended by delegates from Great Britain and all the dominions its purpose was to discuss means whereby trade within the British commonwealth of nations might be profitably increased. At this conference agreements were made between the mother country and various individual dominions (not including the Irish Free State) as a result of which Great Britain gained some advantages for her manufactured goods while the dominions obtained compensatory concessions notably as respects the importation of their agricultural products into Great Britain free of duty. Incidentally the negotiations disclosed the large dependence of the dominions upon Great Britain for a market and also for loans. Canada, by virtue of her close economic relations with the United States formed the only exception.

THE OTTAWA  
ECONOMIC  
CONFERENCE  
1932.

The net gains from the Ottawa conference in the way of inter-imperial trade were not large however because the various dominions were desirous of building up industries within their own borders and hence were reluctant to lower their tariffs appreciably in favour of imports from Great Britain. By these agreements which were to run for five years Great Britain gave the dominions more than she obtained from them. British agriculture has suffered from the competition of dominion products while British industry has not gained much from the concessions made by the dominions. The Ottawa conference was successful however in arranging agreements between various dominions whereby each gave the other certain trade concessions. Canada, for example made such agreements with the Union of South Africa and with the Irish Free State.

ITS RESULTS.

At the Paris peace conference of 1919 Canada, Australia, New Zealand and South Africa were represented by their own delegations. The covenant of the League of Nations provided moreover that the dominions should be admitted as regular members of the League with the right to maintain separate representatives in the League's assembly. This arrangement, which gave Greater Britain six votes in the assembly of the League (or seven votes with the admission of the Irish Free State) was strongly criticized in the United States but the various dominions insisted upon it as a mark of their self governing status and they have

THE BRITISH  
DOMINIONS  
AND THE  
LEAGUE OF  
NATIONS

been represented in the League assembly since its establishment

A king of shreds and patches quoth Shakespeare although he did not have George VI in mind The red patches big and little

THE TIES which indicate British suzerainty on world maps  
THAT HOLD are not held together by force but by the intangible  
THE EMPIRE bond of common allegiance and common ideals

These ties may be light as air but they are strong as iron Every square mile of this territory whether it be kingdom or dominion colony or rock bound fortress is vested with a common allegiance The king is king in Canada in Rhodesia in New Zealand in Hong kong in Gibraltar The monarchy therefore is the visible symbol of unity throughout this vast dispersion which Britons call their imperial commonwealth And a token of unity is needed for it is amazing how few men on this earth have minds which can really grasp a political conception such as sovereignty the commonwealth or imperial federation

The community of political ideals is also a tie that binds the British commonwealth of nations together although it does not manifest itself in any symbolic form Everywhere there is a consciousness of these common ideals and a conviction that they can only be preserved by holding together

Grave mother of majestuous works  
From her isle altar gazing down  
Who god like grasps the triple forks  
And king like wears the crown

It is an adventure full of fascination this attempt to reconcile democracy and self government with the need for common action in matters affecting the whole I have remarked again and again said Cleon that democracy cannot govern an empire It may be true The future of the British empire will decide History affords us no clue to prophecy for the world has never seen a commonwealth like this one

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The *Round Table* a quarterly review is published in London and contains a full discussion of current imperial problems.

## CHAPTER XXII

### A SURVEY OF FRENCH CONSTITUTIONAL HISTORY

Nothing is gained for France by one Frenchman more —  
C'est d'Ât

France is an old country but a young republic a republic less than three score and ten years of age The present political institutions of republican France most of them are not of republican birth They are derived in whole or in part from the various monarchies empires and dictatorships that have had their day in France during the past five hundred years It is sometimes said that France is a country with the physique of a republic the spirit of a monarchy and the temperament of an empire The French Republic in other words is a republic with a past Its visage is well indented by hangovers from the days of Bourbons and Bonapartes

Ask an Englishman when the middle ages came to an end and he will give you the year 1500 as an approximate date He calls Cromwell a modern statesman Shakespeare a modern dramatist and Milton a modern poet He is right—so far as his own country is concerned England entered the modern era about the time that America was discovered But if you ask a Frenchman he will tell you that the middle ages did not come to an end until 1789 inasmuch as feudalism despotism and the other institutions of medievalism were not ousted from France until that date To him the Revolution of 1789 is the most epoch making event in the history of the world It came like the law on Sinai wrote Sainte Beuve amid thunder and lightning So when the Frenchman speaks of modern France he means post revolutionary France Modern France is very modern

A R U LIG  
WITH A AST

RANCE  
GAN HER  
MO RN  
H TORY  
WITH THE  
REVO UTI N

#### THE SHOCK OF THE REVOLUTION

It is not surprising that this should be so for the Great Revolution shook France as nothing else has ever done English history contains



nothing like it There have been revolutions in England but never a revolution like this France prior to 1789 was a despotism

CHARACTER  
ISTICS OF THE  
OLD RÉGIME  
1 NO  
LIBERTY

All political authority centered in an absolute monarch There was no constitution no parliament no ministry responsible to the people Once upon a time France had possessed the makings of a parliament an assembly of three estates—one representing the clergy another the nobility and the third the common people But the Estates General met only when the king chose to issue his summons and as time went on the intervals between meetings became steadily greater During the long period intervening between 1614 and 1789 no meetings were called at all So the Estates General unlike the English parliament never developed into a check upon the royal prerogative The king made the laws and the ordinances he also enforced them and punished violations on his own authority The classic boast imputed to Louis XIV— *L'état c'est moi*—embodied no mere fiction of royal power The king and the state were one He was legislature executive and judiciary combined the people had no share in their national government

Nor did the people of France in pre revolutionary days control their own local government They had no elective councils in

OR SELF  
GOVERNMENT

province or town or parish Everywhere the officials of the king were in evidence—intendants subdelegates procureurs du roi grand voyers bailiffs and tax gatherers In the king's name they ruled city and country alike responsible to no one but the monarch himself Securities for the rights of individuals were unknown There was no freedom of worship or of speech or of petition no writ of habeas corpus no trial by jury By a *lettre de cachet* anyone might be arrested thrown into jail and kept in jail without specific accusation for any length of time In a word there was no liberty

Nor was this all The country was honeycombed with special privileges of every sort The clergy paid no taxes although the

2 NO  
EQUALITY

church possessed enormous wealth It was said to own one seventh of all the land in France The nobility paid only nominal sums in taxation The entire burden fell upon the bourgeois and peasant classes This burden was very heavy for the royal government spent money in prodigious sums To make things worse the privilege of collecting the taxes was farmed out to profiteers who bid high sums for it and

then had to recoup themselves by mercilessly squeezing the people. The higher positions in the government service, as well as in the army and the navy, were reserved for members of the noblesse. Many public offices, including judgeships, were literally sold at auction and when purchased became hereditary. This meant that only the rich could aspire to positions of honor or emolument in the service of the state. In a word there was no *equality*.

Finally, the nation possessed no national consciousness. The kingdom had been built up out of provinces, and the old provincial sentiment remained strong. People continued to think of themselves as Burgundians, or Normans or Bretons rather than as Frenchmen. There was no system of common law common throughout the land, as in England. Each province, each part of a province had its own body of customary law and no two of them were alike. A traveller in France, it was said, changed laws as often as he changed horses. As between town and rural district, moreover, there was little intercourse and no fraternal feeling. The townsman despised the peasant, the peasant scorned him in return. Trade between town and country was throttled by the octroi or municipal tariff which levied duties at the town gates on all merchandise passing from one place to another. Goods going from Hare to Paris paid duties at ten points on the way. Even within the towns the old guilds or close corporations of artisans continued to control industry and to foster all sorts of class animosity. Thus the various parts of the country and the various elements among the masses of the people were kept at arm's length from each other. In a word there was no *fraternity*.

Liberty, Equality, Fraternity thus became the watchwords of the surging tide which overwhelmed the old regime in 1789. The Revolution began in Paris. On July 14, 1789, the mobs stormed the grim structure known as the Bastille and turned the prisoners loose. Within a few weeks the old order had been levelled to the ground everywhere. A revolutionary government was thereupon set up and a constituent assembly proceeded to clear away the debris. Eventually the king and queen were sent to the guillotine, the institution of nobility was abolished, the Church was disestablished and its land confiscated, all special privileges and immunities were declared at an end, the Gregorian calendar was displaced by a new system of months and years, the towns were given complete home rule, the country was deluged

3 0  
FRATERNITY

THE  
REVOLUTION  
OF 1789

with paper money (assignats) and the guillotine was kept working overtime <sup>1</sup>

Meanwhile as the ground was being cleared the work of rebuilding began. The revolution produced a series of constitutions

THE VARIOUS  
REVOLUTION-  
ARY CONSTITUTIONS  
(1789-1795)

The first was a Declaration of the Rights of Man promulgated by the assembly in 1789. It was supplemented by various decrees which endeavored to carry the principles of the declaration into effect.

Then in 1791 came a more elaborate constitution providing for a responsible ministry and a single legislative chamber chosen for two years from men of property by indirect election. Although the Declaration of 1789 had asserted that men are born with equal rights and remain so, the suffrage was now limited to those who paid a certain sum in taxes. But this constitution did not go far enough for such radicals as Danton and Robespierre who wanted a real democracy of the proletariat. So it was replaced in 1793 by a new and much more striking document which formally set up the First French Republic with a single chamber and an executive committee. This constitution was submitted to the people and ratified by them but was never put into effect. Robespierre became the virtual dictator of France and inaugurated the Red Terror but he soon fell from power and the moderates gained control. Thereupon a new constitution was drafted, submitted to the people and ratified by them in 1795.

This constitution of 1795 provided for a legislature of two chambers chosen by voters with property qualifications. It established

THE  
DIRECTORY  
(1795-1799)

a plural executive or directory as it was called composed of five members chosen by the legislature.

Strong men were placed upon this directory and the country began to recover from its revolutionary chaos. The events of 1795 marked the turn of the tide. From revolution and radicalism the pendulum now began its swing to conservation and centralization.

The government of the directory continued to function for four years but it never had a fair chance because France was hard

THE  
CONSULATE  
(1799-1804)

pressed by foreign enemies during the whole of this period. In 1799 it was replaced by the consulate with Citizen Bonaparte installed as First Consul.

Those who wish a succinct account of these great changes will find it in C. D. Hazen *The French Revolution* (New York 1932).

The young Corsican had risen rapidly through a series of military victories and by a *coup d'état* took the reins of power into his own hand. Bonaparte was not an enthusiast for democratic government. He did not believe in popular constitutions. On one occasion he remarked that an ideal constitution ought to be short and obscure. Hence in 1800 the constitution of the directory was supplanted by a new one in which virtually all power was centralized into a single hand.

#### THE NAPOLEONIC RECONSTRUCTION

The Man of Destiny was now master of France. In 1802 he had himself proclaimed first consul for life and two years later (after submitting the question to a vote of the people) he became emperor. Thus within the space of fifteen years France had run the whole cycle of Bourbon despotism, revolutionary chaos, makeshift republic and Bonaparte's empire. Both as consul and as emperor Napoleon found it necessary to do a lot of reorganizing. He centralized power in his own hands until he had far more of it than any of the old Bourbon kings ever possessed. The whole system of local government was welded into a perfect pyramid. By his Concordat with the Papacy Napoleon restored the Church to something like its old status. He could not give back its lands for these had been divided and had passed into the hands of many small owners, but it was understood that the Church would be supported out of the public funds. How can you have order in a state, he said, without religion? Believing also in social distinctions he revived the institution of nobility and founded the Legion of Honor. But the most striking among Napoleon's non-military achievements was the compilation of a series of law codes and the systematization of legal procedure throughout the country. These codes have remained in operation without radical change to the present day.

Many other things were accomplished by way of reconstruction during the Napoleonic era. Unhappily the dramatic character of Bonaparte's military operations have served to dull the world's appreciation of him as a civil leader. Most Americans think of the first Napoleon as a warlord of vaunting ambitions and intermittent genius who lost the battle of Waterloo but he was in fact the most far visioned and

THE FIRST  
EMPEROR  
(1804-1815)

NAPOLEON  
ERA

HIS RANK AS A  
STATESMAN

constructive statesman of modern times. He was a man of marvellous political imagination and great organizing power. Courage and force were his immortalizing qualities. He was never afraid of a thing because it was new nor was he disdainful of anything because it was old. France owes more to Napoleon's pen than to Napoleon's sword. The results of his statesmanship are still redounding to the benefit of his people while the fruits of his military victories have long since been bartered away.

The Napoleonic legend still survives moreover and is an invisible factor in the politics of France. From time to time when the country gets discouraged or depressed Frenchmen are roused and thrilled by recollection of the days when the Corsican eagle flew across the Mediterranean to Egypt and over the snows to Moscow. They think of Marengo and Wagram of Jena and Austerlitz. The memory of these great days is more than a memory to France. It is an eternal stimulus to the national pride. But after all these Napoleonic crusades achieved nothing in the way of permanent additions to French territory. They merely salted the deserts and steppes with the bones of Frenchmen. Legends pay little heed to profit and loss.

#### FRANCE BETWEEN TWO BONAPARTES

The First Empire came to an end in 1814-1815 by reason of its military collapse. After his defeat at Waterloo Napoleon was packed off to St. Helena where he grumbled his way to illness and death. Meanwhile the old Bourbon dynasty was restored to power in France. The new king, a younger brother of Louis XVI who was guillotined during the Revolution, was expected to be the head of a constitutional monarchy patterned after that of England. So a written constitution was prepared and put into operation. This charter attempted to reproduce the unwritten constitution of Great Britain hence it contained provision for a House of Peers, an elective House of Commons and a ministry. It was assumed that the ministers as in England would hold themselves responsible to the elective chamber. There was to be trial by jury, freedom of the press, writs of habeas corpus and all the traditional English securities for personal liberty.

But Frenchmen soon discovered that it is far easier to transplant

THE  
NAPOLEONIC  
LEGEND

THE BOURBON  
RESTORATION  
(1815-1830)

the forms than the traditions of a government. British institutions would not take root in Gallic soil, even though the new environment was only thirty miles away. It has often been said of the Bourbons that they could

WHY IT  
AILED

learn nothing and forget nothing. At any rate Louis XVIII never caught the spirit of the constitution which he swore to uphold. Neither did his brother Charles X who succeeded him in 1824.<sup>1</sup> The new king tried to maintain in office a ministry which did not have the confidence of the elective chamber and thereby brought about a parliamentary deadlock. To break this deadlock he tried to set aside the provisions of the constitution, and by so doing precipitated the July Revolution of 1830. This resulted in the king's abdication and France once more faced the problem of providing herself with a new government. The time was not ripe for a restoration of the republic and anyhow most Frenchmen believed that the monarch, not the monarchy had been at fault.

So they kept the monarchy and changed the line of kings. Louis Philippe of the House of Orleans was put on the throne with the understanding that he would be a strictly constitutional ruler. But owing to the multiplicity of political parties in France the English system of ministerial responsibility would not function. Frenchmen grew tired of a government conducted by bourgeois politicians who spent their time in ceaseless squabbles. The old glories seemed to have departed the country was sinking to the status of a second rate power. *La France s'ennuyait*, as Lamartine said and the sentiment in favor of a republic grew apace. Had France been England her parliament would have solved the problem by a Great Reform Act, but neither Louis Philippe nor his parliamentary advisers could take a large view of the situation. They let matters drift from bad to worse until in 1848 Paris once more flamed into revolution. The king quickly relinquished his throne and the Second Republic was inaugurated.

THE ORLEANS  
MONARCHY  
(1830-1848)

The constitution of the Second Republic framed by a convention of delegates in American fashion provided for a scheme of government that was simplicity itself. France was now to have a president directly elected for a four year term by manhood suffrage. The ministers were to be

THE SECOND  
REPUBLIC  
(1848-1852)

<sup>1</sup>For a full account see F. B. Artz, *France under the Bourbon Restoration* (Cambridge, Mass. 1931).

named by the president. And there was to be an elective parliament with a single chamber. No more would France try to pattern her political institutions after those of England. A simple constitution and direct democracy would provide a cure for the nation's troubles. And a strong president would regain for France a place of leadership among the powers of Europe.

But where would France find a strong man, a man on horseback to be president of this Second Republic? Right here the new constitution ran full tilt into its first great problem because there was no outstanding popular idol in sight. France in 1848 had some statesmen who were old and discredited and some who were young and unknown but she had no one whose qualities marked him as the man of the hour. But there was one ambitious fellow who saw in this situation a rare opportunity. Louis Napoleon, a nephew of the great Corsican, had been living in England, an exile. As head of the family and heir to the Bonapartist tradition he quickly seized the occasion, crossed to France and got himself elected a member of the assembly. Then he announced his candidacy for the presidential office. He had no visible qualifications for the post except the heritage of a great name. But the Napoleonic legend and his lavish promises were enough. The country rallied to this soldier of fortune and he was elected by an overwhelming majority.

As might have been expected, the election of a Bonaparte to the presidency was a prelude to the end of the new republic. Louis

**LOUIS  
NAPOLEON  
AND THE COUP  
D'ÉTAT  
1851** Napoleon had unrepentant ambitions. His heart was set on becoming emperor. With the name I bear, he said, I must either be on a throne or in a prison. Although elected president for only four years and constitutionally ineligible for reelection

he had no intention of ever quitting his post of power. Accordingly as his term drew to a close he decided upon a characteristically Bonapartist stroke. Having secured the support of the army he moved large bodies of troops to Paris and arrested all the political leaders who were known to be opposed to him. Then on the morning of December 2, 1851, the people of the city awoke to find the billboards placarded with proclamations announcing that the president's term had been extended to ten years. There was a slight show of popular opposition but it was unorganized and speedily repressed. Less than a year later the president submitted to

the people of France the question whether he should become emperor. This plebiscite was so adroitly manipulated and controlled that the people gave an affirmative vote and in November 1852 the Second Republic was transformed into the Second Empire with Napoleon III at its head.<sup>1</sup>

#### THE SECOND EMPIRE AND ITS COLLAPSE

Under Napoleon III some important changes were made in the plan of government. The double-chamber system was revived with a Senate made up of high officials and of senators appointed for life by the emperor. The lower house or assembly although ostensibly chosen on a manhood suffrage basis never proved to be a mirror of public opinion. The elections were controlled in ways which ensured the choice of the official candidates. One method was to provide that the ballots were not to be counted when the polls closed but were to be taken home by the election officer kept overnight, and counted in the morning. In the interval between the closing and the counting most of the election officers did their duty.

Anyhow it did not matter much if some opposition crept into the chamber of deputies. The emperor had his ministers appointed by himself but they were not responsible to either branch of parliament. The imperial power became as fully centralized under Napoleon III as it had been in the days preceding Waterloo. Napoleon III had none of his uncle's brilliancy either as a statesman or soldier but he was nobody's fool and he managed to stay on the revived imperial throne for eighteen years.

The Second Empire lasted from 1852 to 1870. It covered an era of unexampled business prosperity in France and this prosperity proved to be (as prosperity always does) a great solvent of political discontent. During his first eight or ten years the emperor was popular with the Church, with the army with the business interests and to some extent with the masses of the people. But after 1860 his star began to wane. The country began to grow restless under the

THE SECOND  
EMPIRE  
(1852-1870)

THE CENTRALIZATION  
OF IMPERIAL  
POWER

ITS EARLY  
POPULARITY  
AND LATER  
DECLINE

Though Napoleon III was thus posthumously deserved of the young King of Rome the only son of Napoleon I.

M. H. G. Wall in his *Outline of History* (V I II p 438) makes the startling assertion that Napoleon III was a much more supple and intelligent man than Napoleon I. No historian would agree with any such evaluation.



rigorous autocracy of the government Napoleon III attempted to divert attention from domestic affairs by plunging the country into various diplomatic and military ventures—the Crimean War the Franco-Italian Austrian War of 1859 the expedition to Mexico and a gesture on the Rhine in 1866 These manoeuvres succeeded for a time but the incessant stimulus brought its inevitable reaction Popular restlessness became so disturbing that various concessions to the principle of ministerial responsibility had ultimately to be made particularly on the eve of the War with Prussia in 1870 This war which Napoleon III entered so confidently brought his own rule to an end <sup>1</sup> For the emperor with a large portion of his army was cornered by the Germans at Sedan and forced to surrender Napoleon III was subsequently released by his German captors and went to England where he died in 1875

When the news of this surrender reached Paris the capital blew up with indignation The Empress Eugenie who had been serving as regent while her husband was at the front, fled to England A committee of national defense took control of affairs and the Third Republic was proclaimed without any general agreement, however as to what sort of republic it should be Many of those who helped to proclaim it were monarchists at heart while some others at the opposite extreme were communists who desired a proletarian dictatorship

### THE THIRD REPUBLIC

Meanwhile the committee set itself up as a provisional government The immediate problem was to solidify resistance to the Germans and to save Paris from capture As it turned out however the military disasters were too great to be retrieved by any eleventh hour effort The Germans advanced to Paris surrounded the city and forced it to capitulate in the early days of 1871 The surrender was followed by an armistice during which the French people elected a national assembly empowered to pass upon the terms of peace This body chosen by manhood suffrage convened at Bordeaux in February 1871 Its members were elected for no definite term and tacitly assumed unlimited powers Most of them were avowed monarchists

The cause of the Franco-German War of 1870 is too complicated for narrative They are set forth in all the general European histories of the period

THE COLLAPSE  
OF 1870

PROVISIONAL  
GOVERNMENT  
OF THE THIRD  
REPUBLIC

who had little interest in republican government and were strongly opposed to radical changes of any sort

The make up of this national assembly was a great disappointment to the radical elements especially in Paris. They showed their resentment by setting up a revolutionary government in the city thus endeavoring to set Paris free from control by the new national government.

THE  
COMMUNIST — A  
REVOLUTION  
N E U D

A brief but sanguinary civil war resulted and after several weeks of hard fighting around Paris the government of the Commune (as it was called) came to an end. Thus the capital was subjected to a double siege and capture within a single year first by German and then by French troops. The communist interlude produced a reaction throughout France and made certain that the Third Republic if a republic at all would be a definitely conservative one.

Having quelled the Commune the national assembly was now able to go ahead. Its first task was to complete the peace negotiations with the Germans and get them out of France. This unpleasant mission was entrusted to Adolphe Thiers whom the assembly appointed chief executive of France with the proviso that his authority might be revoked at any time. Thiers became in effect

THE  
THIERS  
ASSUMED  
AND T  
T R M S O  
P

temporary President of the Republic while retaining his seat as a member of the assembly. Under his direction the terms of peace were arranged and ratified. The Germans annexed Alsace Lorraine and imposed a war indemnity of five billion gold francs to be paid by the French government within five years. Portions of France were to remain occupied by German troops until the last installment had been paid. No extension of time was requested by the French and there were no attempts at evasion. The whole indemnity was raised and paid in gold or the equivalent of gold within thirty six months from the signing of the treaty. This action stands in sharp contrast with Germany's reparation procedure after the close of the World War.

The assembly also turned its attention to the task of framing a new constitution and here some serious difficulties were encountered. With a membership of more than 700 it was too cumbersome a body for constitution making. A majority of its members moreover were monarchists or imperialists at heart and did not desire a republic as a permanent

AMERICAN  
NEW  
CONSTITUTION

institution These anti republicans were in sufficient numbers to have adopted any sort of monarchical or imperial constitution if they had only been able to agree among themselves But they were divided—some wanted a Bourbon monarchy some an Orleans monarchy and some a restoration of the Bonapartes This disunion enabled the republicans to keep control of the assembly and in the

late summer of 1871 it passed the Rivet Law so called  
 THE RI ET  
 LA (1871) by which Thiers was definitely named President of the Republic with the provision that both he and his ministers should be responsible to the assembly for all their official acts This action virtually committed the Third Republic to the principle of executive responsibility after the English fashion Thiers continued to be a member of the assembly and frequently mounted the tribune to advocate his own views thereby creating a rather anomalous situation—a titular chief executive trying to be prime minister and floor leader as well

For nearly two years France drifted along under this makeshift arrangement without a constitution and without any clear decision as to her ultimate form of government On one occasion the assembly gave consideration to a complete draft of a republican constitution but rejected it by the solid vote of the monarchists who

FACTIONAL  
 QUARRELS  
 A D D AD  
 LOCK were able to compose their quarrels for the moment On the other hand these monarchists were helpless when it came to uniting on an alternative constitution They could agree to destroy but not to construct Thiers as a member of the assembly

THI RS AND  
 ACMAHON became involved in these squabbles and in his impatience swung over to the republican side urging his own views so earnestly that the assembly in 1873 restricted his right of addressing it When further friction developed he resigned in a huff The assembly quickly accepted the resignation and in his place chose Marshal MacMahon whose term of office it subsequently fixed at seven years MacMahon was a soldier who had risen to the highest rank in the army under Napoleon III and his election was everywhere regarded as a clean cut victory for the anti republicans

After MacMahon's election the assembly discussed various plans for a monarchical or imperialist restoration but could not agree upon any of them although on one occasion it came very close to

doing so. Nor did there seem to be any chance that a republican constitution could secure the support of a majority. In this dilemma the assembly appointed a committee to prepare individual resolutions (*projets*) in the hope that various questions relating to the form of government might be settled one by one. This proved to be a way out of the difficulty and in 1875 the assembly was able to adopt one by one a series of three constitutional laws. Then having made provision whereby these laws might be easily amended it went out of existence. These three laws were all that the Third Republic obtained in the way of a constitution from this long-lived assembly. They still form the constitution of France—if three unjoined laws can be called a constitution.

THE MAKE  
SHIFT  
CONSTITUTION  
(1875)

#### THE CONSTITUTIONAL LAWS OF 1875

The French constitution of 1875 differs from that of any other nation. It is unlike the constitution of Great Britain because it was drawn and put into force within a single year by an authorized group of constitution makers. It is unlike the Constitution of the United States in that it comprises not one document but three. In form it is a piecemeal half-hearted unfinished affair. These constitutional laws of 1875 bear visible evidence of the spirit in which they were drafted. Their provisions are poorly arranged and crudely ordered. They are silent on many matters of the highest importance—for example the rights of the citizens the organization of the courts the selection of the ministers and even the method of constituting the Chamber of Deputies.

It is not that Frenchmen are novices in the art of making con-

In the summer of 1873 a majority was in sight of a plan by which France would again become a limited monarchy with a Bourbon (the Comte de Chambord) as the throne and an Orléanist (the Comte de Paris) to have the right of access. Everything was settled except the flag. The Bourbon claimant held to the old fleur-de-lis while the Orléanists insisted upon retaining the tricolor. On this flag question the whole plan foundered.

The Law of February 24, 1875, deals with the Senate the Law of February 25 relates to the President, the Chamber of Deputies and the ministry and the Law of July 16, 1875, explains the relations of the public authorities. The text of these laws may be found in any collection of modern constitutions—for example, in H. L. M. Bain and Lindsay Rogers, *New Constitutions of Europe* (New York, 1922) or in W. E. Rappard and others, *Source Book on European Governments* (New York, 1937) Part II pp. 8-15.

stitutions At drafting and adopting constitutions they had, in 1875 more experience than any other European people. Between 1789 and 1875 France had no fewer than seven constitutions each of which was believed by its framers to be a monument of constructive statesmanship and worthy of a long life. The constitution of 1795 for example was touted by its framers as a paragon. It never went into operation. The Charter of 1814 was extolled as a perfect copy of a perfect model. It died of anaemia when it was only sixteen years old. The constitution of 1848 was regarded by the founders of the Second Republic as the last word in governmental simplicity and effectiveness. It perished while still in its swaddling clothes. The constitution of 1852 was beralded as an instrument through which the old time glories of France could be revived. It brought the country to humiliation and civil war. The constitution of 1875 differed from all its predecessors in that nobody was proud of it, nobody was willing to be its godfather, nobody thought it would live, nobody regarded it as anything but an unworthy compromise. Its framers, for the first time in the entire history of constitution making felt under obligation to apologize for the shabbiness of their work.

But they builded better than they knew. Their jerry built trio of constitutional laws has lasted for a longer time than any of the comprehensive and refined constitutions of earlier days—imperial, monarchical or republican. This constitution weathered the storm and stress of the World War, it has now rounded out more than three score years and is still in vigor although more pretentious constitutions in neighboring lands, both north and south, have gone into the discard.

What is the reason for this. It is mainly to be found in the fact that the constitution of 1875 unlike all previous French constitutions, did not embody any system of political philosophy and did not sacrifice practicality to principles, as previous French constitutions had done. Nor did it attempt to make the frame of government hard and fast. Rather it left a great array of things to be determined by statute, ordinance, custom, precedent, and growth—in other words by time and habit as Washington once said. It did not wipe the old slate clean and begin anew on the contrary it

HO IT  
DIFFERS FROM  
PREVIOUS  
FRENCH  
CONSTITUTIONS.

THE SEQUEL  
(1875-1938)

REASONS FOR  
THE LONG  
LIFE OF  
THE PRESENT  
CONSTITUTION

retained all the governmental institutions which existed prior to 1875 except insofar as they happened to be irreconcilable with the new order. Nothing was needlessly abolished. There was no violent break with the past. There was no borrowing of institutions from abroad. The constitutional laws of 1875 are Gallic in every line. They fitted the needs of their day; they have proved easy to change and to expand. Hence it has come to pass that the Third Republic, born on the morrow of a great disaster and speeded on its way by men who did not wish it to live, has grown stronger with the lapse of time. During the past twenty-five years of war and reconstruction it has shown itself able to bear the heaviest strain that could be put upon any government.

France in 1875 was tired of changing governments by *coups d'état* and revolutions. The framers of the constitutional laws were anxious to provide a non-violent way of shifting the basis of the state whenever it should become desirable. So they made the process of amendment simple — about as simple as it could be made without entirely abolishing the distinction between constitutional and ordinary laws. The French constitution may be amended at any time by action of the two legislative chambers, the Senate and the Chamber of Deputies. In other words constitutional amendments and ordinary laws are made by the same legislators but not in the same way.

HOW  
AMENDMENTS  
ARE MADE

Each chamber, when a proposal to amend the constitution is put forward, decides whether it will go into joint session with the other chamber to decide upon the proposal. If both chambers agree to a joint session, the senators and deputies repair to the great hall of the palace at Versailles where they meet as a national assembly. Each senator and each deputy has one equal vote and an absolute majority in joint session is essential. Either chamber, of course, may decline to join with the other in convoking a session of the national assembly, and in this way each chamber has a veto on any constitutional amendment that may be desired by the other. As a practical matter, therefore, all amendments to the constitutional laws require a majority of those present in each of the two chambers sitting separately, as well as an absolute majority of the two chambers sitting together.

THE PROCESS  
IN DETAIL

This means that the Constitution of France is much easier to amend

than is the Constitution of the United States. The distinction between constitutional and ordinary laws is still theoretically maintained by the French although it is not of much practical importance. It takes a majority in both chambers to pass an ordinary law. The same majority is virtually always sufficient to change any provision

in the constitution. In 1884 the national assembly adopted a constitutional provision stipulating that the republican form of government must never be made the subject of an amendment, but this stipulation would be no legal barrier if a future national assembly should decide to do what it forbids. There is no way in which a sovereign body can limit its successors. The process of amendment is easy but this does not mean that it has been freely used. The flexibility of the constitution obviates the need for frequent changes. It is almost always so when a constitution is couched in general terms.

Since 1875 in fact the constitutional laws have been amended on three occasions only. The first was in 1879 when an amendment

substituted Paris for Versailles as the seat of government. Five years later (1884) one of the constitutional laws—the one relating to the organization of the Senate—was completely revised. More specifically

it was provided that the law relating to the organization of the Senate should no longer have the status of a constitutional law but should be an organic law which might be changed like any ordinary statute. Another amendment made at this same time provided that no member of the Bourbon, Orleanist, or Bonaparte family should be eligible for election to the presidency. A third stipulated that when the Chamber of Deputies is dissolved a new election must be held within two months. In 1926 a provision was added to the constitution safeguarding the integrity of a fund for amortizing the national debt.

One of the terms used in the foregoing paragraph suggests the question: What is an organic law? Wherein does it differ from an ordinary law? There is not much difference other

than a sentimental one. An organic law is one which although open to repeal or amendment by exactly the same process as an ordinary law is nevertheless regarded as more fundamental than a simple statute.

It deals with the framework or mechanism of government. It is, therefore, of more than ordinary importance and has a sort of halo

IT IS AN EASY  
PROCEDURE,  
BUT HAS  
SELDOM BEEN  
USED

O A FE  
AMENDME TS  
HAVE BEEN  
MADE

CO STITU  
TIONAL,  
ORGANIC, A. D.  
ORDINARY  
LAWS  
COMPARED

around it. It is not to be changed lightly or without good reason. We have a few statutes in America which roughly correspond to the organic laws of France; the statute of 1886 which establishes the existing rules of succession to the presidency (in case of the death or disability of both President and Vice President) is a good example. Such laws in France regulate the method of electing senators and deputies.

Legal sovereignty in France resides with the national assembly that is with the two chambers in joint session. When the assembly is convoked there are no limitations upon what it may do. The Senate, being the smaller of the two chambers and hence liable to be outvoted in a joint session, has always been reluctant to join in a convocation of the assembly until definitely assured as to just what amendments are to be considered. Yet if the national assembly should decide to go beyond the specific amendments that it was convoked to consider there is nothing to prevent its doing so. For the assembly is the judge of its own powers and no court can declare its actions unconstitutional. Its decisions do not require the approval of the President nor are they submitted to the people for ratification.

SUPREMACY  
OF THE  
NATIONAL  
ASSEMBLY

France during the nineteenth century served as the world's chief laboratory for political experimentation. The people tried one form of government after another, one constitution after another—only to find themselves disillusioned. Roughly a dozen constitutions trod on each other's heels during the ninety years from 1789 to 1875. The world looked on and shrugged its shoulders.

EXPERIMENTS  
HAVE CEASED  
AND FRANCE  
HAS SETTLED  
DOWN

It was a commonplace saying in England that Frenchmen had neither political sense nor sagacity and that they didn't deserve a stabilized government because they were too philandering in their political fidelity to give any form of government a fair chance. Sixty years ago people were amused by the story of a young son who went into a Paris bookshop and asked for a copy of the French constitution. The old bookseller gazed at him above his spectacles and said: "My son, we don't sell periodical literature here. Go to a newsstand."

There could be no point in that criticism today. For sixty-odd years France has lived under one constitution, one form of government. Her people have shown no sign of a crisis from the republican cause. The republic apparently is here to stay, although in



these days of world wide ferment there is no predicting how long or how short the life of any government will be

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An important volume on *The Government of France* by W. R. Sharp is available for early publication.

See also the references at the close of Chapter XXIII

## CHAPTER XXIII

### THE PRESIDENT OF THE REPUBLIC

The old kings of France reigned and governed. The nineteenth century reigns but does not govern. The President of the United States governs but does not reign. It has been reserved for the President of the French Republic neither to govern nor to reign.—*S. Henry Maine*

The presidency of the French Republic has been the butt of many epigrams at home and abroad. Clemenceau, who held the prime minister's post during the closing months of the World War, once declared that there were two things for which he could never find any reason—to-wit: the prostate gland and the French presidency. And the Abbe Lantaigne, more savage in his characterizations, once dismissed the presidency from his writings as an office with the sole virtue of impotence. Its incumbent, he said, must neither act nor think if he does either he stands to lose his throne.

Yet in spite of all this badinage the fact remains that the President of the Republic is the supreme representative of the executive power in France. He is the chief of state and holds the highest political honor that a great nation can bestow. He sits in the seat of Bourbons and Bonapartes. He is the titular commander in chief of the armed forces on land, at sea, and in the air. He is the first citizen of the Republic. It may be quite true that the office does not carry powers commensurate with its dignity, but it is none the less a post which the most eminent statesmen of France have sought and are seeking.

#### THE PRESIDENTIAL OFFICE

The President of the Republic is not elected by the French people. He is chosen by an absolute majority of the two chambers of the French parliament sitting together as a national assembly. The idea of having the president elected by popular vote did not find favor with the men who framed the French constitutional law of 1875. They retained too vivid a recollection of what had happened in 1848 when the people

were stampeded into electing a president whose chief ambition was to scuttle the republican *form of government* and turn France into an empire with himself at its head. It is to be remembered moreover that the assembly which adopted these constitutional laws had already elected two presidents Thiers and MacMahon. Hence they did not establish a new office in 1875 but merely formalized the powers of an office that was already in existence.

The presidential term is seven years and there is no legal barrier to reelection. Nor is there any popular sentiment against choosing a president to succeed himself. But a reelection has taken place on one occasion only although on two other occasions a president would probably have been named for a second term had it not been for his own disinclination to continue in office.<sup>1</sup> Thus the tradition against too long a presidential tenure seems to be ripening in France as it has done in America by the aid of voluntary declinations.

The procedure by which the national assembly chooses the president is laid down in the constitutional law of 1875. Briefly it is as follows. At least one month before the expiration of his term the president must summon the two chambers into joint session as a national assembly. If for any reason he fails to do this the two chambers are directed to meet of their own accord fifteen days before the expiration of the presidential term. In case the presidency should become vacant by the death or resignation of the incumbent before the expiry of his seven year term (as happened on six occasions) the two chambers convene immediately without any formal summons and proceed into joint session as a national assembly. The joint session is held at Versailles in a wing of the great chateau erected by Louis XIV.

The election takes place without nominations, speeches or discussion. This does not mean however that there is no manoeuvring, bargaining, lobbying and bloc making in advance of the meeting. There is a great deal of it. Caucuses of the various party groups are held and alliances are made among them. As will be indicated later

The list of presidents with their terms of office as follows: Thiers 1871-1873, MacMahon 1873-1879, Grévy 1879-1886, second term 1886-1887, Carnot 1887-1894, Casimir Périer 1894-1895, Faure 1895-1899, Loubet 1899-1906, Fallières 1906-1913, Poincaré 1913-1920, Deschanel 1900-1901 and 1920-1924, Doumergue 1924-1931, Doumer 1931-1933, Lebrun 1933.

there are many political factions in France but no one of them is strong enough to command a majority in the national assembly. So they try to form combinations and agree upon rival candidates. Usually but not always the race gets narrowed down to two leading contestants each supported by a bloc of party groups and the assembly merely makes its choice between these two. There is no popular campaign such as takes place in the United States; no primaries or nominating conventions and no appeal by candidates to the rank and file of the voters. Were any candidate to make his appeal to the people the national assembly would reënt his doing so. The voters in France have no share in the election of the chief executive except insofar as they may, by the influence of public opinion, bring pressure to bear on the action of their senators and deputies.

This system of election does not ordinarily lend itself to the election of strong aggressive personalities. The successful candidate must be someone upon whom enough senators and deputies of varying preferences can agree—and it is not the habit of compromisers to pick strong men. Clemenceau once said ironically that he favored a certain candidate because of his complete insignificance. Vigorous leaders with minds of their own do not make good candidates under a system of election by party blocs. Nor if elected are such men likely to make good presidents—as the history of the Third Republic has shown on at least two noteworthy occasions.

So the actual election under ordinary conditions is merely a dignified ceremony. The senators and deputies on the day appointed troop out from Paris to Versailles. The national assembly convenes in its great hall and is called to order by the president of the Senate. Not infrequently the president of the Senate is himself one of the candidates for the presidency but he takes the chair all the same. The French see nothing wrong in having one of the rival candidates preside over a session at which his own election or defeat is to be determined. An urn is then placed on the tribune (a platform from which speakers address the assembly when it meets to discuss constitutional amendments) and the names of all the senators and

deputies are called by a herald. Inasmuch as there are nearly nine hundred senators and deputies in all, this solemn calling of the roll consumes a good deal of time. As each member's name is reached, he walks to the tribune and formally deposits in the urn a slip of paper bearing the name of his choice for the presidency.

Any French citizen is eligible to be chosen unless he has been deprived of his political rights by the judgment of a court, or unless **EXCLUSION 1.** he is a member of a family that has reigned in France during the royalist or imperial epochs. This last named exclusion was added to the constitution by one of the amendments of 1884. It was dictated of course by the fear that some Legitimist or Orleanist, or Bonaparte might manage to get himself chosen president and thereupon repeat the *coup d'état* of 1851. The constitution does not expressly exclude women from being elected to the presidency, but as yet there is no woman suffrage in France and the national assembly contains no women members.

Official tellers, whose duty it is to count the ballots, are drawn by lot from the entire membership of the assembly, and in an **FIRST AND SECOND BALLOTING.** adjoining room they commence their work as soon as the last name has been called. If, when the result of the vote is announced, it appears that someone has received an absolute majority of all the votes cast, he is forthwith declared elected; but if no one has met this requirement of an absolute majority, the assembly proceeds to ballot a second time, and if necessary it keeps on balloting like an American party convention until a choice is made. As a rule, however, the first ballot is decisive, because a sufficient bloc has been pledged in advance. On only three occasions has a second ballot been necessary, and in no case has the assembly had to ballot a third time.<sup>1</sup> The newly elected president is then installed at the close of his predecessor's term, but if he has been chosen to fill an unexpected vacancy, he takes office at once, for there is no vice president in France.<sup>2</sup> In the interval between the death or resignation of one president and the installation of his successor, the council of ministers is vested with the chief executive power and exercises it by the issue of ministerial decrees. Judged by the honors accorded him at his election and there

<sup>1</sup> Second ballots were required to reelect Grévy in 1886, to elect Faure in 1895, and to elect Poincaré in 1913.

<sup>2</sup> When chosen to fill an unexpected vacancy a president does not merely serve for the unexpired term, he serves out the full seven years.

after the President of the Republic is a very exalted personage. He is saluted by one hundred guns (the President of the United States gets only twenty-one) he travels in the most de luxe trains and glittering brigade of French troops. He always turns out to be reviewed by him wherever he goes. He has all the homage that is accorded to royalty in monarchical countries. During his term he has the use of the Elysee Palace as his executive mansion and of the Chateau de Rambouillet as his country residence. He is provided with a presidential box at the opera and has other perquisites of various sorts. His salary is 1,800,000 francs per annum (about \$70,000 at the present rate of exchange) with an equal amount for household and travelling expenses.

#### THE LINE OF PRESIDENTS

The Third Republic has had fourteen presidents in sixty-six years (1871-1937) so that although the legal term is seven years (with eligibility to re-election) the actual average has been less than five years. Casimir Perier and De Gaulle reigned after holding office for a few months only. Four others reigned after varying periods of service—Thiers, MacMahon, Crépeau and Millerand. They were virtually forced out of office by the action of hostile parliaments. Three presidents died in office—Carnot who was assassinated in 1894, Doumer who met the same fate in 1934, and Faure who died suddenly when his term was a little more than half completed. Only four presidents have elected their tenure of office otherwise than by death or resignation—Loubet, Fallières, Poincaré and Doumergue. Thus the presidential office has been closely associated with personal and political vicissitudes.

What manner of men have the fourteen presidents of the Republic proved themselves to be? Like the elected chief of state in other countries they have been of varying quality. Some have been strong-willed and capable others have been mere figureheads. Others would be hard to rank in either category. In comparison with American presidents since 1871 there is no one near them who ranks up to the level of Cleveland or Wilson in ability, world reputation and statesmanship. Whether on the other hand the Elysee has sheltered

A list of the names of the French presidents by Professor Albert G. and the history of the Republic by Professor G. L. G. Log. is published by the University of Cambridge, February 1935.

more mediocrities than the White House during the past sixty years is an arguable question —although hardly worth the arguing

Adolphe Thiers the first of the French presidents was a notable figure qualified both by personal capacity and long political experience for the highest office in any land He had

THIERS  
(1871-1873)

been a *prime minister* in the reign of Louis Philippe and was one of the great historians of the nineteenth

century His patriotism and his devotion to the interests of France were beyond question as was shown in his handling of the peace negotiations in 1871 Conservative in temperament he was not an avowed republican at the time of his election but he became one before he resigned the office in 1873 The Republic owes a great deal to Thiers for he tided it through a very critical time

As successor to Thiers the assembly elected a man of altogether different stripe a soldier of Irish ancestry a marshal of France and a protege of Napoleon III by name Patrice Maurice

MAC MAHON  
(1873-1879)

MacMahon The Hibernian flavor of this name calls for a word of explanation MacMahon's ances-

tors emigrated from Ireland to France in the seventeenth century Their descendants became thoroughly Gallicized but apparently did not lose any of their traditional Celtic fondness for war and politics Marshal MacMahon made his reputation in the Crimean War and in the War of 1859 Later he held a high command in the Franco Prussian War of 1870 but was wounded before the Sedan disaster came After the war he put down the Commune in Paris

The election of MacMahon was dictated by the royalists and imperialists in the hope that it would be a prelude to the extinction of the Republic No one imputed to MacMahon

REASONS  
OR HIS  
ELECTION

the ambition to set himself upon a throne but it was felt that he would readily make way for a king

or emperor if a good opportunity should arise But although frankly an anti republican MacMahon had too high a sense of personal honor to engage in any royalist *coup d'etat* and the hour of destiny kept postponing its arrival So the election of MacMahon as it turned out was not a prelude to the overthrow of the Republic but a death blow to royalist ambitions

This brave soldier made a better showing on the battlefield than in the executive chamber He was blunt imperious domineering Eventually (1877) he came into controversy with the Chamber

of Deputies by virtually repudiating the principle of ministerial responsibility.<sup>1</sup> Urged by the anti republicans to strain his powers a bit he endeavored to install and keep in office a ministry which did not have the Chamber's confidence. Thereupon the fiery Leon Gambetta leader of the republicans declared that MacMahon must either give in or give up. And when the Chamber undertook to make the old soldier give in he had neither the desire nor the unscrupulousness to put through a military *coup d'état* as his imperial master had done a quarter of a century before. The breaking point was reached in 1879 when the Chamber asked him to dismiss from the army certain of his former comrades in arms who were suspected of being too strongly Bonapartist in their affiliations. Thereupon he resigned from office a year before his term would have expired.

HIS CON GT  
WITH THE  
CHAM R

AND HIS  
RESIGNATION  
(1879)

The next president Jules Grevy was neither a scholar nor a soldier but a typical bourgeois and a moderate republican. His election indicated that the Third Republic was getting set. Grevy was a lawyer by profession seventy two years of age at the time of his election shrewd cautious slow moving and close fisted to a degree that soon became proverbial. His tenure of the presidential office was a lively one because the Chamber kept upsetting his ministries one after another. Thereupon the trouble makers came to the front particularly the redoubtable General Boulanger of whom more will be said a little later. For a time it looked as if France might again pass under the aegis of a military dictator. Grevy was neither popular nor positive but his native astuteness enabled him to hold the fort. He even managed to secure his own reelection in 1886 mainly because no strong candidate appeared in the field against him. But his second term was of short duration for the Wilson scandals forced his resignation before the close of 1887.

OR VS  
(1879-1887)

Grevy's successor was a dark horse among the presidential candidates. As none of the leading contestants seemed likely to obtain a majority the leaders compromised upon Sadi Carnot a civil engineer by profession and a former minister of public works. Carnot was the heir to a historic name his grandfather having been the organizer

G. R. N.  
(-1894)



of victory during the Great Revolution. A cultivated, industrious, and well intentioned statesman of fair ability, his chief desire was to avoid political strife. But in this he did not succeed. The Bou langer agitation, the Panama scandals, and other high explosives shook the country. Radicals and revolutionaries used the opportunity to stir up trouble. France was overrun with *demolisseurs*. The air became surcharged with rumors of bribery and corruption involving everyone from ministers down. The whole country seethed with restlessness. Presently one anarchist threw a bomb into the Chamber of Deputies, another stabbed the president and killed him. These outrages brought the nation back to its senses.

The murder of Carnot was followed (as such tragedies always are) by a wave of popular indignation. The country rang with demands for law and order, for a suppression of radicalism, for the application of the iron hand.

There was a reaction to conservatism, and on the crest of this wave a leader of the conservatives was swept into the presidency. This new incumbent was Casimir Perier, a statesman of high reputation for energy, one whose ancestry, social position, and affiliations seemed to provide a sufficient guarantee that he would be a safe and sane chief executive.

Casimir Perier was no neophyte in French politics for he had already served as president of the chamber and as prime minister.

But he was too masterful a man to content himself with a career of inactivity. When the country settled back to its normal routine he chafed in his narrow

cage. "I cannot reconcile myself," he said, "to the impotence to which I am condemned. Moreover, he was a very sensitive man and could not bear the barbed criticism which it is the habit of the French newspapers to shower upon men in high public office. The Dreyfus affair, which now came to the front, also worried him greatly." Not having sought the presidency, Casimir Perier saw no reason why he should worry himself to death in an office which had turned out to be so distasteful to him. So he resigned and was out of the presidency within six months from the date of his election.

For the second time in a twelvemonth the national assembly convened to choose a president. On the first ballot the radicals were united while their opponents were not. But the latter closed up their ranks on

AURE  
(1895-1899)

the second ballot and secured the election of Felix Faure. A man of humble birth, he had risen by his own diligence to be a wealthy shipowner and a member of the ministry. He was known to be a cautious man, and the juncture called for extreme caution because the Dreyfus case was now turning the whole country into a bedlam. The new president disappointed his friends by allowing himself to be drawn into this bitter controversy, but before it was over he died suddenly, and the Paris gossips added mysteriously, although there appears to have been no real basis for the rumor that Faure was poisoned by his enemies.

The next three presidents, Loubet, Fallières, and Poincaré, served out their septennates without mishap. Together their terms covered the first two decades of the new century.

Loubet and Fallières were unaggressive, self-effacing men who had risen from the ranks of the peasantry. Both had singularly uneventful terms in office for the grave dangers which had threatened the very existence of the Republic in its earlier days were no longer to be feared. Loubet was occasionally suspected of having opinions of his own, but they never emerged from beneath his tall silk hat. Fallières revived at the executive mansion the bourgeois virtues of economy and thrift just as Calvin Coolidge did in the White House twenty years later—but with this difference, that Coolidge was admired by his countrymen for it, while Fallières got himself cartooned as the country's champion tightwad.<sup>1</sup> Being a sensible old fellow, he rather enjoyed it.

The choice of Raymond Poincaré in 1913 was fortunate. His great abilities were a godsend to France when he found himself faced with the task of carrying the presidency through the World War. There were times during this great conflict when defeatism seemed to be on the point of getting the upper hand in France. A weak personality in the Elysée during those years would have been a catastrophe. But Poincaré was a steadying influence to the end.

LOUBET  
(1899-1906)  
AND  
FALLIÈRE  
(1906-1913)

POINCARÉ  
(1913-1920)

On occasion, he said he inherited a thousand francs to live on after a catastrophe had occurred in the French cities. Madame Fallières repaid him for this largesse when, upon the President's death, she was going to evict him from the place by calling on account of the disaster a scheduled reception at the Elysée. She immediately ahead of the game, he had killed the general, and the expression was seized upon by the hansom men every Parisian cabaret.

On his retirement it was generally assumed that the octogenarian Clemenceau known as 'Old Father Victory' by reason of his having served as prime minister during the closing year of the war would be chosen as his successor. But Clemenceau was an anti-clerical and in his long political career had left a long trail of bruised enemies behind him. These now united to encompass his defeat. They succeeded in forming a bloc behind a rival candidate Paul Deschanel and elected him. So the Old Tiger went his way while the booming of guns welcomed the accession of a journalist statesman from the next generation.

The new president was young, brilliant, aggressive and popular. But unhappily his tenure of the office proved to be even shorter

and more tragic than that of Casimir Perier had been. A mental breakdown came upon him with mysterious suddenness and snatched away the prize which he had labored many years to gain. The first public intimation of it came when the President of the Republic was found early one morning trudging along the railroad track in his pajamas. He had leaped from a train. They sent him to Rambouillet to recuperate and he walked out into a lake. Then his friends persuaded him to resign. He was in office but a few months and died soon after he left it.

As his successor the assembly chose Alexandre Millerand a publicist who had figured prominently in French political life

for more than twenty years. He had begun his career as a socialist, but later antagonized his socialist friends by entering a bourgeois ministry. There

after his rise was steady he eventually became prime minister and gained the confidence of the conservative elements in the Chamber.

Although a heavy, sleepy-eyed, ill-garbed man in appearance there was nothing sluggish in Millerand's mentality as France soon discovered. He was a man of ideas and of action although

his ideas were not always sound nor were his actions always wise.

Millerand began his term with a declaration that the powers of the president ought to be increased. The presidential office

he believed ought to be approximated to that of the United States. There was nothing new or startling about this other presidents had said it before. But

Millerand intimated that he proposed to put his theory into practice. The opportunity however did not arise for a few years because

DESCHANEL  
(1920)

MILLERAND  
(1920-1924)

HIS PARTISAN  
SHIP AND THE  
RESULTS.

Poincaré had come back into office as prime minister and the two found it easy to work amicably together. The relations between them became so close in fact that the president drew upon himself the hostility of all Poincaré's opponents. They felt that this close alliance with the prime minister's national bloc was not in keeping with the political neutrality which the French constitutional system expects the chief of state to maintain.

Accordingly when Poincaré lost control of the Chamber at the elections of 1924 the incoming Left bloc insisted that the president as well as the prime minister must resign. Millerand at first declined to comply with this demand but he found that no ministry possessing the confidence of the Chamber could be formed so long as he retained the presidency. There was nothing to do but accept the situation and relinquish his office. In his place the national assembly elected Gaston Doumergue, presiding officer of the Senate, a colorless figure with a negative political record. He served out his term without misfortune and in 1931 gave way to Paul Doumer who was assassinated about a year after his election. The chambers in joint session then chose for the presidency Albert Lebrun who had also placed himself in line by serving as the presiding officer of the upper chamber.

It will be seen therefore that men of all sorts have held the chief executive office in France as they have done in America and are likely to do in any republic. King Log and King Stork have both had their turn. In France as in America the critics complain that great and striking men are ignored for mediocrities. Gambetta, Ferry, Dupuy, Waldeck Rousseau and Clemenceau failed to reach the Elysée even as Webster, Clay, Calhoun and Blaine failed to reach the White House. The reasons are much the same in both countries. Strong aggressive personalities do not usually make good candidates. By being strong they incur the suspicion of the party leaders. By being aggressive they encourage a feeling of antagonism. Party leaders prefer safe men who will not insist upon coloring the whole government with their own individuality. In France this is almost necessarily the case for the experience of President Millerand showed that patoisanship is wholly out of place in the presidential office. A man of strong political convictions will inevitably try to govern which is what a French president is not supposed to do.

DOUMERGUE  
DOUME AND  
LE BRUN

WHY SO FEW  
GREAT AND  
STRIKING  
MEN

The Fathers of the Third Republic made a mistake when they provided on the one hand that the president should be chosen by the representatives of the people and on the other hand that he should have only nominal powers. Under such an arrangement there are only two alternatives—either that weak men will be chosen or that strong men will make trouble. To obtain capacity in any public office you must bestow power. If a country insists upon having a figurehead as its titular chief executive the best way to secure him is by obeying the law of primogeniture. There is some danger that even by taking the eldest son of an eldest son you will occasionally obtain someone with a will of his own (as Great Britain has recently discovered) but the danger is less by this method than by any other.

THE ANSWER  
IS IN THE  
NATURE OF  
THE POST

#### THE PRESIDENT'S POWERS

If the French president is not expected to govern what are his powers? In general they are surprisingly like those of the English king. He summons the two chambers of parliament he may propose laws he has a suspensory veto on laws passed by the French parliament he appoints all the higher officials he negotiates treaties he sees that the laws are executed he is the commander in chief of the army and navy he has the power of pardon and he may dissolve the Chamber of Deputies if the Senate concurs but there has been no such dissolution for nearly half a century.

All these powers are given him by the constitutional laws of France subject only to one proviso namely that they shall be exercised by him on the advice of responsible ministers. But this proviso is an all important one. It is so important indeed that its insertion makes all the difference between real power and the mere shadow of it. Those who have studied the government of England will understand that proposition readily enough. The provision for ministerial responsibility means that France has the parliamentary type of government like England and not the presidential type of government like the United States. Every official act of the French president must have a ministerial countersignature. The only document that does not require it is his letter of resignation.

POWERS OF  
THE  
PRESIDENT  
(a) IN FORM

(b) IN FACT

To the mind of the average American the term republic suggests

a particular form of government, namely the antithesis of monarchy. Anything that calls itself a republic most Americans seem to think, must be something like the American republic. But there is no magic in terminology. You can have a republic that is a monarchy in everything but name. And that is the sort of republic which the French people have chosen to set up. It is a unitary republic wholly unlike that of the United States which is federal. It is a parliamentary republic wholly unlike that of the United States which is presidential. It is a republic without a system of checks and balances. It is a republic without a bill of rights without woman suffrage without the distractions of a presidential campaign every four years. The student of comparative government will learn more about France from England than from the United States.

The President of the French Republic summons the Senate and the Chamber of Deputies for their annual sessions and proclaims them when their work is done. Both of these things he does on the advice of his ministers. But if he fails to convoke them prior to the second Tuesday in January the two chambers meet of their own accord. And their sessions must not be brought to an end by the president until they have sat for at least five months. Meanwhile he may adjourn the chambers but not for more than a month at a time and not more than three times in the same session. All this of course differs essentially from American practice for the President of the United States does not regularly summon, adjourn or dissolve either branch of Congress.

The constitutional laws of 1875 give the French president the right to initiate proposals of legislation but this means nothing for he can only initiate through his ministers. And it is simpler for the ministers to bring in the proposals directly. The president does not address either of the two chambers in person but he may communicate with them by sending messages to be read from the tribune by some member of the ministry. No president during the past fifty years however has sent such messages except to express thanks for his election or to announce his resignation. There could be no point in his sending a message of any other sort for it would have to be countersigned by a minister which means that it would amount to nothing more than a minister

A ROYAL  
ANALOGY

POWERS IN  
RELATION TO  
THE  
CHAMBERS

1. THE  
INITIATIVE IN  
LEGISLATION

WHAT IT  
AMOUNTS TO

rial communication. The French president's initiative in lawmaking is of no greater importance therefore than that of the English king.

The French constitution also gives the president a suspensory veto power. When a law has been passed by both branches of the

French parliament it does not go into effect at once. It must be officially promulgated that is published by the president and declared to be in force. This is

ordinarily done within one month but if parliament designates the law to be urgent the president must promulgate it within three days. If however he disapproves the measure he is empowered to withhold promulgation and return it to the chambers for reconsideration. Then if they stand their ground he must promulgate the measure at once. No two-thirds vote of the chambers is necessary in France as in the United States to override the president's veto.

The suspensory executive veto in France is of no consequence because it is never exercised. No president since 1875 has sent

back any measure for reconsideration and it is not likely that any president ever will. The reason is that he could not take such action except on the advice

of his ministers and these ministers are in control of the French parliament otherwise they would not be ministers. So if the ministers disapprove a measure they oppose its passage in the Chamber of Deputies and if they do not succeed in defeating it they resign from office. They could hardly let such a measure pass both chambers and then advise the president to send it back for reconsideration. The insertion of the suspensory veto power in the French constitutional law of 1875 indicates that its framers did not clearly understand the implications of ministerial responsibility. At any rate the President of the Republic promulgates every law as a matter of routine.

All this must not be understood to imply however that the French executive has no share in the process of lawmaking. The

president neither proposes laws nor vetoes laws but his office has a very considerable part in the elaboration of laws after they are passed. This is because there

has been developed in France a form of legislative activity with which Americans are also becoming familiar namely the practice of supplementing laws by the issue of ordinances decrees executive orders and administrative instructions. The laws passed by the French parliament are usually couched in general terms. They do

not try to include every detail or to provide for every contingency that may arise. On the contrary they lay down certain broad principles and leave the details to be supplied by executive decrees issued in the name of the president.<sup>1</sup>

These presidential decrees must not of course modify any substantive provision of the law but so long as they keep within its general phraseology they can stiffen or liberalize the details at will. Any controversy as to whether the ordinance is out of harmony with the general provisions of the law goes to the highest administrative court for decision that is to the council of state. And as a safeguard against later invalidation all ordinances of public administration are now submitted to the council of state for scrutiny before being promulgated. All this gives the executive a good deal of influence upon the details of legislation although one should hasten to add that the president himself takes no responsibility for the drafting of decrees or ordinances. The work is done by his ministers or more accurately by subordinates of the ministers.

For the most part the French parliament has been disinclined to confer broad discretionary powers upon the executive branch of the government. But it has done so at times especially in emergent situations. The most recent occasion was in the spring of 1937 when the Chautemps ministry demanded and obtained for a limited period the right to issue decrees without the necessity of keeping them within the bounds of existing laws. A critical situation in French public finance seemed to make the exercise of such powers desirable.

Americans who go to France have observed the billboards covered with *affiches* embodying decrees issued by ministers, prefects, sub-prefects, mayors—by officials of all ranks from the president down. This leads them to remark that the French appear to have a free for all scheme of law making and congratulate themselves that there is nothing like that in the U.S.A. But they are wrong. There is a good deal of it in the United States. Congress leaves a great many things to be settled by executive orders and regulations. Take the immigra-

EXECUTIVE  
LEGISLATION  
IN AMERICA.

Most of the general statutes include with some such provision as this: "And in order that public administration be enabled to meet the measures appropriate for securing the exercise of this law." Sometimes the provision is more specific in prescribing the scope of the ordinance.

See *bill* Chapt. XXX.



tion laws the postal laws the laws governing interstate commerce the federal tax laws and the whole category of new deal laws that have been enacted during the past half dozen years Executive orders in the United States are not posted upon the billboards but there are whole volumes of them as every lawyer knows When the secretary of the treasury by order of the President issues a set of rules with reference to the reporting of incomes for taxation he is doing precisely what the French ministers do by ordinance or decree Executive orders and regulations are rapidly becoming as plentiful in America as in Europe

The President of the French Republic with the approval of the Senate has power to dissolve the Chamber of Deputies at any time

4 THE POWER TO DISSOLVE THE CHAMBER but only in one instance has there been such a dissolution This was on the occasion of the famous Seize Mai in 1877 when President MacMahon ap-

THE AFFAIR OF MAY 16 pealed to the country in the hope that it would support his attempt to keep a reactionary ministry in power

But the country refused to uphold the president's action and by so doing ultimately forced him to resign

Thereby was established the principle that a president who dissolves the Chamber gives his own tenure of office as a hostage to success If a ministry cannot retain control of a

THE DOCTRINE ESTABLISHED THEREBY majority in the Chamber of Deputies it must not according to the usages of French government,

advise the president to dissolve the Chamber and hold a new election It is not the custom in France as in England to regard the ministers as having a right to appeal from the Chamber to the electorate Frenchmen regard such action as having the flavor of a *coup d'état* So if a ministry loses control of a majority in the Chamber it must resign On the other hand if it should advise a dissolution while still retaining control of the Chamber the president would have to proceed in accordance with this advice and seek the Senate's concurrence but it is hard to imagine a French ministry doing any thing of the sort

All civil officials all officers of the army and the navy are appointed in the name of the president But the actual appointing

5 THE APPOINTING POWER power resides in France just where it resides in England In neither country is there any personal discretion on the part of the titular chief executive

In France all the higher officials of administration are nominated to

the president by his ministers and are then formally appointed by presidential decree. It is true that the president sometimes recommends certain candidates to the favorable attention of the minister just as any citizen of the Republic has the right to do but the ministers are under no obligation to heed his recommendations. An appointment is virtually made when the ministers agree on it and sometimes it is publicly announced before the presidential decree has been prepared. Casimir Perier during his short and fretful term of office complained that his first knowledge of high appointments occasionally came to him through the morning newspapers the ministerial nominations reaching him later in the day.

Appointments to subordinate posts are made by individual ministers who themselves sign and promulgate the decrees of appointments. The president on the advice of his ministers may also remove officials from office subject to a few constitutional exceptions. Ordinarily no new positions may be created except by action of parliament which alone has power to appropriate money for salaries but in certain contingencies new offices may be established by presidential decree. Parliament also prescribes the qualification for every office and it has dealt with such matters at great length. In France as in other countries the power to grant pardons is given to the chief executive. This authority he exercises in all cases on the advice of the minister of justice. The constitution expressly provides however that an amnesty (that is a general pardon to all offenders of a designated class) must have the assent of both chambers.

The President of the Republic is commander in chief of the army the navy and the air forces. On the advice of the minister of war and the minister of marine he determines where each unit of the armed forces shall be stationed. But the size of the military naval and air establishments is determined by parliament which fixes the annual quota of recruits and appropriates the money required by all branches of the service. By the provisions of the French constitutional law a declaration of war requires the assent of both chambers but it is self evident that the ministers who control both the diplomatic policy and the disposition of the armed forces may create a situation in which the chambers have no alternative but to give this assent. The same is true in the United States where Congress alone can declare war but where the president and his

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6 THE  
RESIDENT AS  
COMMANDER  
IN-CHIEF

cabinet can force a controversy to a point at which no congressional discretion would remain

In international relations however the President of the Republic is a figure of far less importance than is the President of the United

7 HIS  
RELATION TO  
FOREIGN  
AFFAIRS

States. It is true that ambassadors who come to Paris as the diplomatic representatives of other countries are accredited to him. It is also true that, in form at any rate, he appoints the French ambassadors at other capitals. The instructions to these diplomatic representatives are also given in his name. But the actual framing of the instructions is in the hands of the minister of foreign affairs and his immediate subordinates. So it is with treaties. They are negotiated in the name of the president by the same minister. They are signed by the minister of foreign affairs or by somebody whom this minister designates. As a matter of courtesy the president is kept informed regarding the course of diplomatic affairs and the negotiation of treaties. As a matter of courtesy also the ministers often seek his opinion, but they are under no obligation to be guided by it.

It is not a constitutional requirement in France nor yet does usage require that all treaties shall be laid before parliament for ratification. The terms of treaties need not be communicated to the chambers if the interest and safety

TREATIES.

of the state require them to be kept secret, but treaties of peace, treaties of commerce, treaties which involve financial obligations, and those which relate to the personal status or the property rights of French citizens in foreign countries do not become effective until they have been communicated to both chambers and ratified by a majority vote in both. The same is true of treaties which involve any change in the boundaries of territories belonging to France. But military agreements and treaties of alliance do not come within the foregoing category and they have usually been kept secret. The terms of the entente with England prior to the World War, for example, were never submitted to the French parliament. But the Covenant of the League of Nations, to which France is now a party, requires that all treaties (including treaties of alliance) must be registered with the secretariat of the League and made public.

The French president is not amenable to the jurisdiction of the ordinary courts. He may not be arrested, tried, or condemned for any offense, civil or criminal. But provision is made for his impeachment in case he is charged with the crime of high treason.

The charge must be brought by the Chamber of Deputies and the impeachment is tried by the Senate. A majority is sufficient to convict and no limit is placed upon the penalty which may be imposed. In both these respects the French procedure differs from that laid down by the Constitution of the United States which require a two thirds vote for conviction and restricts the penalty to removal from office and disqualification. No President of the French Republic has ever been impeached.

HOW THE  
PRESIDENT  
MAY  
BE REMOVED  
FROM OFFICE

The narrowness of the president's part in legislation in the making of appointments and in the conduct of foreign affairs must not be overemphasized. For be it borne in mind that the president chooses the prime minister (who in turn selects the other ministers) and he sometimes finds himself able to exercise some discretion in making the choice. He is not always under obligation to choose a designated individual as his prime minister. This is because there is no dominant party in the French Chamber but only a dominant bloc. And this bloc may contain more than one leader who is in a position to command its support. On such occasions the president may use his own judgment in selecting a prime minister but these occasions are becoming less common and in any event his range of choice is never very wide. Usually he confers with the presiding officers of both chambers obtains their advice as to the man who is best qualified to form a new ministry and then follows it. Remember too that the president is himself no tyro in practical politics. He has had to do with parties and factions and blocs. And not often does he fail to pick the right man that is a prime minister who can command a majority.

THE  
PRESIDENT  
AND  
THE  
MINISTERS

Many Frenchmen are far from satisfied with the role which the constitutional laws have given to the chief of state. It is a fundamental principle of the constitution says one cynical writer that the president shall hunt rabbits and not concern himself with affairs of government. But three and a half million francs per annum would seem to be a high price to pay for a rabbit hunter who is not always an expert at that. So there are some who believe that the presi-

THE FUTURE  
OF THE  
PRESIDENTIAL  
FI

It is the president's big task to hold the nation together. It is his duty to see that the government is able to carry out its policy. Some say that the president is a figurehead and that the real power lies with the parliament. But others believe that the president is the guardian of the constitution and that he should have the power to appoint and dismiss the prime minister and the members of the cabinet. In any case, the president is a very important figure in the French political system.

dential office should either be abolished altogether or else made a position of real power as it is in America. From time to time the various radical parties have urged the substitution of a plural executive as in Switzerland, and on one occasion a constitutional amendment to this end was proposed in the national assembly but it was ruled out of order. Of late years the proposal to abolish the presidency has been dropped and the suggestion that its powers be increased has been obtaining more serious discussion.

But nobody has been able to suggest a way of increasing the president's authority without changing both the spirit and the form of French government. A ministry must be responsible either to the chief executive or to the legislative body. It cannot be responsible to both, for no ministry can serve two masters. There is no way to increase the authority of the president except by taking power from the ministers, and through them from parliament. This of course, the French parliament is not in the least inclined to do. Far from showing any disposition to relinquish their powers, the chambers have steadily striven to usurp what little authority the president has not already lost.

It was thought in some quarters that the election of Poincaré to the presidency in 1913 would be followed by a rise in the prestige of the office, for Poincaré was the ablest and best-equipped statesman who had gone to the Elysée since the time of Thiers. But even under Poincaré the powers of the presidency did not expand. Again, in 1920 when Millerand rode to the palace amid the booming of a hundred guns it was predicted that here at last was a man who would not fear to put the issue to the test. But the prophets were once more astray as the triumph of the Chamber demonstrated in 1924. When that body forced Millerand out of office before his term was half run it settled the question of political supremacy for some time to come. So the President of the Republic remains, and doubtless will remain a *roi faneant*—a phantom king without a crown.

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The position and powers of the president are fully discussed in Adhémar Esmein *Droit constitutionnel français* (8th edition 2 vols. Paris 1927) Vol. I.

had been riddled by stones with rabbit shot from a gun in the hands of an errand chief of state who persuaded the minister of war to save the wounded warrior's feelings by an admission of rank.

pp 22-207 Maurice Hauwry, *Présidents de la République* (2nd edition Paris, 1921) Louis Ducloux, *Traité de droit constitutionnel* (2nd edition, 2 vols Paris, 1921-1923) as well as 17 J. Barthelemy and P. Duzet, *Traité de droit constitutionnel* (second edition Paris 1933)

Material may also be found in G. de Lathure, *Le pouvoir constitutionnel du Président de la République* (Paris 1911) Jean Druaux, *Le rôle des députés* (Paris, 1911) Henri Loryer, *Le pouvoir de la présidence* (Paris, 1912) E. L. West, *The Government and Politics of France* (New York, 1925) chap. II, Robert Valet, 'France' in E. L. Butler, ed., *British and Foreign Governments in Europe* (New York, 1925) chap. II and Herman Finer, *The Theory and Practice of Modern Government* (2 vols New York, 1932) Vol. II pp 112-1144

On the characteristics of the presidential see E. de Visschers, *Supplément à France: Her Président, State, Policy, Law and Social Life* (Leiden, 1914) H. L. Maddison, *The French Political System* (London, 1933) chap. IX, and the general history of the Third Republic mentioned at the close of the preceding chapter

## CHAPTER XXIV

### THE MINISTRY AND THE ADMINISTRATIVE SYSTEM

France is governed eight months of the year by a parliament, and four months of the year by a ministry — *Emil Faguet*

Many years ago Raymond Poincaré at that time minister of finances was strolling along a country road in one of the French provinces when he heard a voice cry out from behind him Get along you confounded minister Less surprised at being insulted than at being recognized he turned around and saw a peasant trying to make a donkey move faster There's no making this minister go growled the peasant Thus M Poincaré learned that in certain corners of France an ass is called a *ministre* not out of disrespect for this humble beast of burden but because he is the chief servant of the peasantry entrusted with all manner of work that needs to be done And after all Poincaré goes on to ask, are not cabinet ministers the servants of the nation? For the term minister in Latin means the lowliest just as its antithesis (*magister*) means the greatest.

The ministers of the Republic are the servants of the people accountable to the representatives of the people in parliament.

THE BASIS OF A MINISTER'S RESPONSIBILITY

In France as has been shown the president is chosen by the two chambers but is not responsible to either of them. He cannot be brought to task for an official act There is only one way in which the chambers

can directly exert their power upon the president, which is by impeaching him for high treason The President of the Republic is thus in the position of a constitutional monarch. He can do no wrong or at any rate no wrong that is cognizable in the ordinary way But if the president stands above the reach of the chambers, his ministers do not, and it is through them that the French parliament exercises a full and uninterrupted control over the president's official acts In England this control is the outcome of usage in France it rests upon the explicit terms of a constitutional law

The constitutional laws of 1875 provide (1) that every act of the president shall be countersigned by a minister and (2) that the ministers shall be collectively responsible to the chambers for the general policy of the government and individually for their personal acts. Here in thirty three words is an attempt to set down the essential principles of cabinet responsibility as they have been slowly evolved in England during a period of several hundred years. The chief of state is not responsible to the representatives of the people but he must act through ministers who are responsible. Thus the French constitution in explicit terms requires the ministers to exercise the functions of the presidency just as in England usage requires the cabinet to exercise the functions of the crown. In the United States by way of contrast there is no requirement either in the constitution or by usage that the president's orders shall be countersigned by anyone who is responsible to Congress.

WHAT THE  
FRENCH  
CONSTITUTION  
NOW  
PROVIDES

#### ORGANIZATION OF THE MINISTRY

The French constitutional laws make mention of a council of ministers but do not prescribe how many ministers there shall be or how they shall be chosen. Everybody assumed that the president would appoint them and he has done so. But although the president *appoints* the ministers this does not mean that he *selects* them. He selects only the prime minister who in turn picks all the others. The official title by the way is not prime minister but president of the council of ministers. It will serve the purpose of clarity however to use the shorter unofficial term in this discussion. As for the procedure in selecting the prime minister it is much like that followed in England. The president picks his man and requests him to undertake the task of getting together a ministry which can command the confidence of parliament. That done he merely awaits the outcome.

HOW A PRIME  
MINISTER IS  
SELECTED

In making his selection of a prime minister the President of the Republic does not usually have as a practical matter any wide freedom of choice but he has more latitude than is given to the king in Great Britain. There the king must send for the recognized leader of the opposition in parliament. But in France there is often no recognized leader of the opposition or to put it more accurately there may be several who have approximately equal claims

TO WHAT  
EXTENT  
MAY THE  
PRESIDENT  
CHOOSE



to be regarded as leaders. This is because there are so many party groups in the Chamber of Deputies each with its own leader and sometimes with more than one leader. Several parties are usually combined into a bloc but the bloc does not always have a single leader who is so recognized by all those composing it. In such cases the President of the Republic is able to use some discretion in determining which one of these various leaders he will summon to form a new ministry.

His task is somewhat simplified by the fact that the exigencies of the moment usually point to some one individual as the logical successor of an outgoing premier. If the president is in doubt he confers with those who are best able to judge the relative strength of the various party groups and takes their advice as to the individual most likely to succeed in gathering a majority behind him. More particularly he consults with the president of the Senate and the president of the Chamber of Deputies. They know the twists and turns of party alignment in the respective chambers over which they preside.

The President of the Republic is assumed to be a neutral in politics; he must show no favoritism. It is his business to pick some one who can make the grade and he is open to criticism if he does not do it at the first attempt. Occasionally he is fortunate enough to have available two or three good politicians any one of whom would probably be able to form a working coalition among the various party groups. In that case the president can use his own judgment and summon any one of them. But this opportunity does not come to him very often.

Having settled upon his man the President of the Republic summons him to the Elysee and requests him to form a ministry.

The request may be declined as has not infrequently happened whereupon the president turns to some one else. There have been times indeed when two or three declinations have followed in quick succession. But as a rule the president gains a provisional acceptance from the first statesman whom he summons and the work of forming the ministry begins.

The prospective prime minister hastens to confer with the leaders of several party groups and by offering each group one or more representatives in his ministry endeavors to assure himself of a majority in the Chamber of Deputies. According to the gossip

that one reads in the Paris newspapers during a ministerial crisis all his hours are spent in a hurried round of interviews, overtures, pourparlers and solicitations. He finds that one leader will come into his ministry if another is kept out, or that he will stay out unless another is brought in. The *démarches* may go on for several days before the prime minister succeeds in getting his slate made up.

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Perhaps in spite of all his manoeuvring he will fail to solve the puzzle in which case he returns to the president and suggests that somebody else be asked to take the task in hand.

On one occasion there were five abortive attempts to form a ministry before a solution of the problem was found. But when the new prime minister succeeds he submits to the president the names of his ministerial associates and they are at once summoned to take charge of their respective offices.<sup>1</sup> The president has had no share in the choosing of these ministers at any rate no open share. He has no power to reject any name submitted to him. He must take the new ministry intact. Then the prime minister confronts the Chamber, reads his ministerial declaration or outline of policy, asks for its support and usually suggests that it pass a formal resolution of confidence. When his resolution is adopted the ministry is securely in office until the Chamber of Deputies withdraws its confidence, which it may do at any time. On a few occasions a ministry has been formed with the full expectation that it would command a majority, but on coming before the Chamber the new prime minister has found his calculations upset.

THE F A  
S A E

It is not necessary in France as in England that all members of the ministry shall be members of parliament. Nor on the other hand are they forbidden to be members, as in the United States. The constitutional laws are silent on this question of membership. But as a matter of usage the prime minister is always chosen from among the leaders in parliament and almost invariably he is a member of the lower chamber. With rare exceptions too the ministers are selected from among the leaders of party groups in parliament. In the early years of the Third Republic it was thought advisable to select the minister of war from among the high officers.

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MI NISTERS DO  
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HA T  
ARLIAM

The new prime minister proposed by president would be with the co-  
signing of the treaty proposed. The other ministers are proposed  
with the council of the new prime minister.

of the army and the minister of marine from the list of French admirals but this practice has not always been followed in recent years

The size of the ministry is not fixed by the constitutional laws.<sup>1</sup> The president, with the advice of the prime minister decides how

many members there shall be in each new ministry

SIZE OF THE MINISTRY      The silence of the laws does not imply however that the Chamber of Deputies has no control over the size of the ministry on the contrary it can reduce or increase such membership at any time by virtue of its control over the appropriations for ministerial salaries When therefore the prime minister decides on the size of his ministry and so advises the president his action is contingent upon the readiness of the Chamber to vote the sums required

Before the World War the French ministry contained twelve members during the war the number was shifted several times After

1918 it settled down for a time to about fifteen Then

THE EXISTING PORTFOLIOS.      it was increased somewhat. The first Blum ministry

(1936-1937) had seventeen portfolios namely foreign affairs finances interior justice national defense and war air education national economy commerce agriculture public works, posts and telegraphs pensions mercantile marine colonies health, and labor besides the prime minister and three ministers of state without portfolio—making twenty-one in all

The prime minister usually selects one of the foregoing departments for himself—the one for which he deems himself best fitted

Occasionally however he prefers to serve without

THE PRIME MINISTER TAKES ONE OR HIMSELF      portfolio He never takes the department of justice,

for the minister of justice is usually chosen from the Senate and serves as vice president of the council

of ministers Likewise the minister of justice is president of the council of state (the highest administrative court in France) and keeper of the seals which makes him the lineal successor of the pre-revolutionary chancellor In that capacity he reads the annual declaration in the Senate when the prime minister reads it to the Chamber of Deputies Until a few years ago the prime minister had no regular

In 1920 however the French parliament passed a statute which forbade any further increase in the size of the ministry without parliamentary consent but on several occasions since 1920 this law has been evaded

The ministerial declaration of the Blum government (June 6 1936) may be found in W. E. Rappard and others, *Source Book European Governments* (New York 1937) Part II pp 47-50

secretariat to assist him in his relations with the ministry but in 1936 a permanent provision for such an institution was made by presidential decree. Its staff consists of a secretary general and various assistants some of whom are assigned on detached service from the regular ministerial departments.

In addition to all this the minister of justice performs duties somewhat akin to those of the attorney general in the United States. He nominates the judges and other judicial officers for appointment by presidential decree. All applications for pardons are dealt with by him, and his recommendations are followed by the president. The minister of foreign affairs conducts the relations of France with other countries; he has supervision of the diplomatic and consular services. The post is of such high importance that the prime minister in recent years has frequently taken it for himself and in any event this portfolio carries a great deal of prestige.

The minister of the interior has functions widely different from those which are performed by the secretary of the interior in the United States. He is the general supervisor of the local government in France. All the prefects report to him and the work of the local police throughout the Republic is under his direction. He is sometimes referred to as the minister of public order which is a more descriptive designation than the one which he officially bears. His office has a great deal of political importance because the prefects are political as well as administrative agents of the ministry and they can exert a considerable amount of influence in the election campaigns.

The minister of finances is a chancellor of the exchequer and secretary of the treasury combined. He prepares the budget and presents it to the Chamber of Deputies. He is responsible for the collection of the national revenues; he has charge of expenditures and loans and supervises the currency and banking. In addition he is responsible for the management of the government monopolies particularly the tobacco monopoly.

The minister of public works is in charge of public buildings and national highways. The minister of posts and telegraphs is post master-general of France and also manages the telegraph and

FUNCTION OF  
THE  
MINISTERS

1 THE  
MINISTER OF  
JUSTICE

2 THE  
MINISTER OF  
THE INTERIOR

THE  
MINISTER OF  
FINANCES.

telephone services which are owned by the national government.

4 THE  
MINISTER OF  
PUBLIC  
WORKS

The minister of education exercises a general supervision over the system of public education including the elementary secondary and technical schools. His supervisory jurisdiction includes the University of Paris as well as the national libraries museums and other public institutions of an educational nature.

5 THE OTHER  
MINISTERS

The minister of colonies nominates the governors and other officials in the French colonial possessions and has the same general functions as those which pertain to the secretary for the colonies in Great Britain. The ministers of national defense and war air pensions commerce national economy or industry public health agriculture mercantile marine and labor have self explanatory functions which need no detailed enumeration. The ministers without portfolio are free for assignment to any special duties which the prime minister desires to have performed. They are brought into the ministry to give it increased political strength as a body.

The conscientious minister says Poincare has his day well filled. In the morning when he enters his study he finds a formidable

TH WORKING  
DAY OF A MIN  
ISTER

mass of correspondence on his desk. The correspondence which is not addressed to him privately is of course opened and examined by employes but a large number of letters remain which he is compelled to read through. Most of these come from senators or deputies who have acquired

THE MORNING

the annoying habit of recommending people for every kind of official favor. Shortly after nine o'clock the minister gets into his coupe or motor car the coachman or chauffeur of which wears a tricolor cockade. He is driven to the Elysee if there is a council of ministers or to the ministry over which the prime minister presides if there is a cabinet council. The council sits till noon or even later.

On days when it does not sit the minister receives officials or members of parliament. There is an interminable procession of

T  
AFTER NOON

people soliciting favors. After lunch he goes to the Chamber or the Senate. When he returns he finds all the desks and tables in his office loaded with great portfolios crammed with every kind of document. These are orders or decrees prepared by the different branches of his department awaiting the ministerial signature. If he does not choose to sign them

blindly he must spend long hours in delving through these huge piles of papers. He then receives his chief subordinates who come to discuss matters of current business. To acquit himself decently of a task so heavy and so varied it is not enough to possess sagacity. Unless the minister is gifted with a great aptitude for work and a rare promptness of judgment he will be merely the tool of his underlings who get things ready for him.<sup>1</sup>

In France as in England each minister occupies a dual position. He belongs to a council of ministers which deliberates on matters of general policy and endeavors to guide by its decisions the work of parliament. As such he attends all meetings of the ministry and takes part in its discussions. He also attends the sessions of the chamber in which he is a member and goes to the other chamber when matters affecting his own department are under discussion. The constitutional laws provide that the ministers have ex officio the right to attend sessions of both chambers and to be heard in either when they request a hearing. Thus a minister who is a senator may speak also in the Chamber of Deputies while a minister who is a deputy must be heard by the Senate when he so desires. And a minister who has no seat in either chamber may nevertheless attend and speak in both. This is an interesting and significant feature of French government.

The ministers do in fact attend the parliamentary sessions regularly especially in the chambers to which they individually belong. They spend a good deal of time either at the Luxembourg or at the Palais Bourbon when parliament is sitting. This means that it is impossible for them to give such personal attention to their several departments as members of the American cabinet are expected to do. Consequently the elaborate system of recent years the practice of providing certain ministers with undersecretaries who actually take full charge of some branch of departmental work. The duties of each undersecretary are prescribed by a presidential decree.

Although these undersecretaries are not members of the ministry they are more or less regularly summoned to cabinet meetings in order that they may give their advice on matters concerning which they have special knowledge. Therein they differ from the undersecretaries in

A MINISTERS  
UNION  
PROHIBITION

THE  
REPUBLIC

THE  
ATLANTIC

Great Britain and in the United States who do not regularly attend the meetings of the cabinet<sup>1</sup> In France the undersecretaries are usually but not always members of parliament but in any case they have the right to be heard in either chamber They reply to any interpellations that may relate to their own work, and if the reply is not satisfactory they can be forced out of office by an adverse vote of the chamber

In this sense the undersecretaries are directly responsible to parliament, yet they are not permitted to countersign decrees of the president or to issue ministerial decrees over their own signatures When a ministry goes out of office the undersecretaries go too but all other administrative officials remain This permanence of tenure among the administrative staff in all its subordinate ranks is of great consequence to the orderly conduct of business in France where ministries have changed so frequently that the whole fabric of administration would long since have broken down were it not for this official stability on the part of those who do the routine work

The ministry holds two formal meetings a week, usually at nine in the morning At these meetings which are known as sessions of the council of ministers and are held at the Elysee the President of the Republic sometimes presides but has no vote But there are also weekly sessions of the cabinet council which the President of the Republic does not attend At such meetings the prime minister (or in his absence the minister of justice) takes the chair The real business is done in these cabinet consultations the policy of the ministry is there determined upon and matters are put in form for final ratification at the more formal sessions In neither case however are any official records kept the proceedings are strictly secret as in England and in the United States After each session of the council of ministers however the newspapers are given a brief summary in which, as one premier has said all mention of important questions is usually omitted

The French prime minister is not the head of his ministry in the English sense In constructing his ministry he is often under the necessity of coaxing the members in and having done this he is

<sup>1</sup> At Washington, when a member of the cabinet is out of town, however the undersecretary or the senior assistant secretary in his department is usually expected to be present at meetings of the cabinet.

in no position to treat them as subordinates. Individual members of his ministry are well aware of the fact that at a critical juncture they can oust their premier from office by merely tendering their resignations and rallying their co-partisans to vote against him in parliament. This does not mean that they lose their posts for they have a good chance to become members of a new ministry with some other prime minister at its head. This is because a new ministry in France is rarely a new one in the English or American sense. Usually it is a mere reshuffling of an old one.

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#### MINISTERIAL RESPONSIBILITY

In France according to the literal terms of the constitution the ministers are jointly and individually responsible to whom? To both chambers and not, as is the English usage, to the lower house alone. In practice moreover the French ministers do hold themselves responsible to both chambers inasmuch as they reply to interpellations in both. But whether they are under obligation to resign whenever the Senate votes its lack of confidence—the answer to that question is not so clear. On more than one occasion the Senate has voted against a ministry without forcing it to resign. On the other hand several ministries have been turned out of office by adverse votes of the Senate—the latest instance being that of the Blum ministry in 1937 which went out of office because the Senate would not support the prime minister's demand for a broad grant of financial authority.

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Of course it is quite obvious that strict adhesion to the letter of the constitution would be impossible. A ministry cannot be equally responsible to two masters who often fail to agree. The Senate and the Chamber of Deputies being elected at different times and in different ways are not always of the same mind. The Senate in general is the more conservative of the two chambers such is what it was intended to be. No ministry howsoever resourceful can hope to retain the confidence of a conservative Senate and a radical Chamber at the same time. Usage however has stepped in to solve the dilemma, for while the Senate has never conceded the right of the lower chamber to decide whether a ministry shall stay in office it has tacitly permitted that

2. THE 1



principle to become operative under ordinary conditions. So despite the wording of the constitutional laws it is in the Chamber of Deputies and not in the Senate that the fate of a ministry is usually settled. One can say therefore that ministerial responsibility in France means responsibility to the lower house much as it does in England. There is a degree of responsibility to the Senate but it may fairly be called exceptional.<sup>1</sup>

In France as in England all the ministers (including the under secretaries) go out of office together when the ministry encounters a reverse in parliament. But this does not mean that they stay out. On the contrary what usually happens is nothing more than a shakeup in which some weak ministers are dropped and some stronger ones taken on. But the terms weak and strong when used in this connection have nothing to do with the personal

capacity of ministers. They are adjectives of politics and refer to a minister's political following only. There have been relatively few ministries during the past sixty years which did not contain some members drawn from among the ministry which had just been overthrown. Even the outgoing prime minister has sometimes been given a portfolio in the new ministry and occasionally has resumed his place at the head of it. Thus it is that the Chamber of Deputies may vote to overturn a ministry one day and within forty eight hours give its confidence to a new ministry composed of almost the same individuals perhaps with the same prime minister at their head. That of course could hardly happen in England.

All this ought to be borne in mind when one reads in English books the statement that France has had ninety one cabinets in sixty seven years or that the French change their ministers as often as their shirts.<sup>2</sup> Taken literally such aspersions are unfair. It does not mean that governmental policy has been shifted on the average every nine months or so. The ship of state keeps right on its course. There is no discernible change in general policy unless the new *combinaison ministerielle* proves to be altogether different from the preceding one which is rarely except

<sup>1</sup> Of the 91 ministries that have been in office since 1871 only four have been ousted by a reversal in the Senate.  
<sup>2</sup> England during the nineteenth century has had only 18 cabinets and only 12 prime ministers.

after a general election such as that which elevated the Popular Front ministry of Leon Blum to office in 1936.<sup>1</sup>

In England a cabinet which goes into office with a majority behind it is rarely turned out until the next election. In France the contrary is true. There it is the Chamber of Deputies, not the electorate, that ordinarily forces a ministry out of office. On very few occasions has a French ministry been repudiated by the people at the polls. Defeat, for the most part, has come at the hands of parliament. Or, to put it another way, in England the cabinet must keep its hand on the pulse of the country; in France upon that of the Chamber. The task of the English ministry is much the easier, for while public opinion in a democracy may be uncertain, coy, and hard to please, it is much less so than is the membership of a loosely jointed bloc in the legislature.

There is another difference between the ministers in France and in England. In both countries they perform executive and parliamentary functions, and supposedly give equal attention to each of these phases of their work. But as a matter of fact the executive duties of the English minister are on the whole deemed to be the more important, whereas in France his parliamentary functions appear to have the first call on his time and interest. A British minister who shows good administrative judgment and capacity is ordinarily safe in office so long as the cabinet stands; but in France a minister's security of tenure depends very largely upon his own individual adroitness as a parliamentarian and a politician. An indiscreet statement, a slight mishap in his department, a minor action which happens to arouse the wrath of some influential newspaper—and his post may be in danger.

#### THE FRENCH ADMINISTRATIVE SERVICE

The routine work of French administration is carried on not only by under secretaries but by subordinate officials in the various ministries. Most of these hold their positions under a permanent tenure; they do not go out of office when a ministry resigns. Together they constitute a vast administrative machine, a great bureaucracy which goes right on

See below Chapt. XXVIII

Several excerpts from discussions relating to the French ministerial system are printed in Norman L. Hill and Harold W. Stok, *Background of European Government* (New York 1935) pp. 266-89.

with its work, unmindful of changes at the top. Ministers come and go but neither their entry nor their exit makes much difference in the routine work of the departments. Even dynasties may change but the bureaucracy neither dies nor surrenders. Paul Deschanel once growled that France is not a democracy but a bureaucracy. He was right in the sense that it is the corps of *fonctionnaires* who do the real work of governing. The ministers assume the responsibility and ostensibly they determine the administrative policy but if a French minister should attempt during his all too-brief term of office to recast the traditional way of doing things in his department he would find himself tackling an impossible job. The minister who heads a bureaucracy is by no means its master. On more than one occasion a French minister has discovered that fact to his own embarrassment.

The French administrative system is well organized. Its keynote is concentration. Functions are devolved by the ministers upon

THE INTERNAL  
ORGANIZATION  
OF A  
MINISTER'S  
DEPARTMENT

1. THE CHIEF  
DU CABINET  
AND HIS  
ASSOCIATES.

directors of services, chiefs of bureaus, chiefs of sections and so on, all forming a hierarchy of definite ranks and gradations. In each of the ministerial departments there is much the same division and subdivision of work. First of all the minister has a group of confidential advisers who form his own little cabinet. The most important of this group, the minister's right hand man, is known as the *chef du cabinet*. In addition there is a deputy chief, a secretary and various attachés. The relation between the minister and his little cabinet is both political and personal; its members hold no other positions; they come into office with the minister and go out with him. No, to be more accurate, they do not always go out with him for he frequently manages to squeeze them into permanent civil service positions just before he goes.

The routine administrative functions of each ministry are divided into services (*directions* they are called) and each service has its director as well as its assistant director. These *directeurs* are officials who have been recruited by promotion from lower positions. They correspond in a way to the assistant secretaries at Washington except that they do not resign when a new administration comes in.<sup>1</sup>

2. THE  
DIRECTEURS  
AND THE  
LOWER RANKS.

But the undersecretaries (see page 445) are not assistant ministers. They do not form a regular link in the administrative hierarchy. They are

Each *direction* is again divided into several bureaux and each bureau has its *chef du bureau* who is also a permanent official. These bureaux are the master cogs in the administrative machine. Without them the whole mechanism would cease to run. They are manned by a large corps of functionaries *redacteurs* (clerks) and other subordinate officials who are minutely classified by ranks and grades. Most of them are appointed to the lower grades in accordance with established civil service regulations and are then promoted on a basis of experience and merit.

Within the bureaux there are further divisions and subdivisions but we need not follow the classification any farther. It is enough to say that the whole organization takes the form of a pyramid with the minister at the peak. All authority converges inward and upward. In France as a whole this bureaucracy makes up an army about 600 000 strong. This may seem to be a surprisingly large number in view of the fact that Great Britain has only about 500 000 but the French total includes a wider range than the British, for example it includes all the school teachers. France also has nearly 400 000 officials engaged in local government, which means that the public payroll supports approximately a million persons not including the military and naval personnel or the employees of the government-owned railways.<sup>1</sup>

France has no general civil service law as in the United States. Several attempts to enact a comprehensive *statut des fonctionnaires* have ended in partial or complete failure. But a merit system of appointments has been developed by numerous ordinances of public administration which have been issued by the ministry with the approval of the council of state. Appointments to the lower positions are based upon competitive examinations (*concours*) and nearly all the higher posts with the exception of the very highest, are filled by promotion. These promotions are made by each minister within his own field, from an annual promotion list which is prepared by a committee of his subordinates. Seniority plays the largest part, but merit may also be taken into account, and sometimes (although not usually) political influence and personal favoritism also have really ministers of the second grade, in charge of special services within the department.

Estimates made some years ago may be found in W. R. Sharp *The French Civil Service* (New York, 1931) pp 13-21. This volume gives an excellent, detailed account of the whole subject.

THE BUREAU

THE MERIT  
SYSTEM OF  
APPOINTING  
OFFICIALS.

a share. Officials of all grades are also protected in France against wrongful suspension or dismissal. They are ordinarily entitled to a trial before a commission of discipline on which there are fellow officials of the same rank.<sup>1</sup>

Each minister lays down the rules according to which the competitive examinations are to be held for posts within his department, although there are a few general requirements for all examinations. The baccalaureate degree for example is required in the case of all except the very lowest positions. Examining boards usually composed of both public officials and college teachers are appointed to conduct the tests which represent a high standard—probably higher than in any other country. Criticism is sometimes made that the examinations are too academic in character and it is also contended that in some way or other ministers manage to get too many of their own friends or relatives into the service.

At any rate nepotism is not uncommon in the public service of the Republic. Public opinion seems to resent it less strongly than in

England or in America. On the whole however  
 NEPOTISM IN  
 THE SERVICE, the French administrative service in its various ranks

and grades has attained a high standard. Capable young men are drawn into it in large numbers despite the low salaries paid and most of them seem to find it an agreeable career. The social prestige which goes with an official position in France and the permanence of tenure count for much especially with young Frenchmen who have some private income with which to supplement their salaries. The liberal pension arrangements also serve to attract bright young men who prefer security to economic adventure.

There are those who find satisfaction in telling the world that parliamentary government has failed in France that ministerial

responsibility has become ministerial anarchy and that the instability of her cabinets has made France  
 A WORD TO  
 THE CRITICS  
 OF THE  
 FRENCH GOV-  
 ERNMENTAL  
 SYSTEM a wall between her and the nations. All this has been so often repeated that a considerable part of the world believes it to be true. But the true test of

Most of the government employs organized highly organized associations of syndicalist character which claim the right to strike if needed because means of increasing their demands. Formal proposals to prohibit strikes by public employees have been materialized into law and protest strikes of short duration have sometimes occurred. For a full discussion see the chapter on Public Personnel Management in France by Walter R. Sharp in *Constitutional and Administrative Law* by Leonard D. White and others (New York 1935) pp 145-153.

a government is the way in which it satisfies the people who live under it. It was Aristotle if my memory serves me right who first remarked that the only properly qualified judges of a repast were the partakers thereof. This dictum has been reiterated a great many times and in a great many versions since Aristotle's day but there are still those who seem to think that the job is on for expert dietitians at a distance. It is quite true that France does things differently from England and America but it does not follow that she does them worse.

There is no general feeling among the French people that their system of parliamentary government has been a complete failure. Critics of their own governmental system there are in France as in the few remaining countries where criticism is now tolerated but they are not more numerous or more vociferous than are the critics of the American scheme of government in America. Law and order are better maintained in France than in the United States justice is more fairly and more promptly administered the work of administration is carried on more economically there are no such things as a spoils system gerrymandering pork barrel machine gun banditry third degree grandfather clause or lynching bees. There are no hung juries and jury fixers ambulance chasers and bosses racketeers vigilantes kidnappers beefsquads bagmen hijackers mattress voters or men who take the rap. The French have at least enough political capacity to spare themselves these adornments of American life.

#### THE NATIONAL ECONOMIC COUNCIL

In order to assist the ministry in planning economic legislation and to help parliament in its consideration of such measures a national economic council was established by decree in 1925. Eleven years later it was enlarged and given a permanent statutory basis. The general assembly of this council now consists of well over a hundred members representing chambers of agriculture chambers of commerce employers associations labor unions intellectual workers consumers organizations and so on together with a small group of economic

An English translation of this law (March 21, 1936) is printed in W. E. Rappard and others, *Social Economics in France* (New York, 1937) Part II, pp. 74-8.

experts. The prime minister is *ex officio* president of the council but he may designate another minister or an undersecretary to serve in his stead. The statutory functions of this body are to make careful studies of national economic problems, and to advise the government thereon. All measures of an economic character when introduced into parliament, are at once submitted by the ministry to the national economic council. All ordinances of public administration if they have economic implications must be similarly submitted. In addition the ministry may submit any economic question to it for study and the same may be done by any parliamentary committee. Or the council may take up any economic problem and submit recommendations on its own initiative. The council's recommendations are made to the prime minister but its reports must be laid before parliament.

Most of the council's investigatory work is performed through twenty professional sections. Each section is composed of an equal number of employers and of manual and intellectual workers. This requirement of equality does not apply to the agricultural section. Members of the various sections are appointed by executive decree after consultation with the national economic council, and the size of each section depends upon the importance of each profession or occupation in the national economy. But no professional section may have more than two hundred members. The national economic council maintains a permanent commission of its own members with the function of receiving requests and distributing them among the various professional sections. This commission has a regular secretariat, headed by a secretary general. When a section makes a report it goes first to the council's permanent commission which then refers the report, if it thinks desirable to the general assembly for discussion. Or it may be directly referred either to the governmental authorities or to organizations representing the economic interest concerned. The permanent commission works in harmony with the ministry of national economy, provision for which was first made in the Leon Blum cabinet (1936).

Since its original establishment in 1926 the national economic council has sponsored a large number of comprehensive investigations in such fields as unemployment, housing, industrial organization, labor relations, overseas trade, and so on. These studies in several instances became the basis for

subsequent legislation especially in the case of measures passed by the French parliament during the past few years. In the earlier years of its existence the council was regarded by the Chamber of Deputies with suspicion and jealousy but this feeling has gradually disappeared. Today the national economic council and its professional sections are generally regarded as valuable aids in the formulation of national policy in economic matters. It should be made clear however that the council's functions are altogether investigatory and advisory. It has no power to make or enforce laws or regulations. On the other hand it provides the regular political authorities with vocational representative bodies whose research work and counsel can be of considerable value.

#### THE COUNCIL OF STATE

The ministry (or council of ministers) should be distinguished from the council of state. This latter body dates from the morrow of the Revolution and in its earlier days possessed large powers. Today its functions are only in small part legislative. All ordinances of public administration as has been said are submitted to the council of state before they are issued, this being done in order to make sure that the ordinances do not reach beyond the scope of the laws. Sometimes the council virtually redrafts the ordinance leaving the president little to do but to sign it. On the other hand the action of the council in such matters is never mandatory; the ministers must submit all ordinances to the council but they are not bound to do what it advises.

THE COUNCIL  
OF STATE

The chief jurisdiction of the *Conseil d'Etat* apart from advising on ordinances of public administration is now concerned with administrative law of which more will be said later on<sup>1</sup>. It is here that it renders its most notable service protecting the citizen against arbitrary action on the part of the public authorities. The council is made up of thirty nine councillors in ordinary service or regular members who are appointed by the President of the Republic under certain statutory rules<sup>2</sup>. These councillors by majority vote render the council's

ITS JURIS-  
DICTION

*Below* Chapt. XXX.

One of these rules is that at least half the councillors in active service must be persons who have served as designated administrative officers and have qualified themselves for higher appointment by competitive examination.



decisions. In addition there are twenty one councillors in special service who represent the various administrative departments and serve in an advisory capacity.

The council of state is in many ways a remarkable body. It combines advisory functions in the making of ordinances with final authority in the adjudication of administrative controversies. It is the supreme administrative court of the Republic. In addition it is a body of legal advisers and technical experts to which the government may turn at any time for counsel in the solution of its problems as sort of collective attorney general. It personifies wisdom, experience and impartiality in the science of administration. Thus it serves as an antidote for the poisons of democracy. The French people have a high respect for their council of state and rightly so for in personnel it maintains a standard which few public bodies in any country are able to approach and by its work it forms a great stabilizing factor in the government of France.

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Léon Dupriez *Les ministères dans les principaux pays d'Europe et d'Amérique* (2 vols. Paris 1892-1894) is still a work of considerable value on the development and nature of ministerial responsibility although it is badly out of date on some points. There are admirable chapters on the French ministerial system in Adhémar Esmein *Dr et constitutionnel* (8th edition 7 vols. Paris 1927) Vol II pp 208-273 Gaston Jèze *Principes généraux du droit administratif* (3 vols. Paris 1925-1930) the same author's *Cours de droit public* (Paris 1929) and Maurice Hauriou *Principes de droit constitutionnel* (2nd edition Paris 1929). The long chapter on 'The Executive Power' in Robert Valéry's study of France (chap p 416) contains many interesting comments. Valuable data is given in J. Echeman *Les ministères en France de 1914 à 1932* (Paris 1932).

Mention should also be made of Duguit's volumes (book p 437) R. Bonnard's *Principes de droit public* (Paris 1936) H. Voel *L'administration de la France* (Paris 1911) Paul Duzet *La responsabilité de la puissance publique* (Paris 1927) Joseph Barthélemy *Le rôle du pouvoir exécutif dans la république* (Paris 1910) and Léon Blum, *La réforme gouvernementale* (Paris 1936).

The best book in its own field is Walter R. Sharp *The French Civil Service* (New York 1931) which explains in full detail the organization of the French bureaucracy. A more general survey may be found in the chapter on 'The French Civil Service' by Aubert Lefas which is included in Leonard D. White editor *The Civil Service in the Modern State* (Chicago

1930) pp 213-279 and in the volume by the same author (with others) entitled *Civil Service Abroad Great Britain Canada France and Germany* (New York 1935)

On the system of national economic councils mention should be made of W E Rappard and others *Study Book European Governments* (New York 1937) Part II pp 74-78 L L Loring *National Advisory Economic Council* (Washington 1931) and E Lind *Review of the Economic Councils of the Different Countries of the World* (Geneva 1932)

A volume on *Le Conseil d'Etat* by R Brugèe (Paris 1910) explains the organization and powers of that body

## CHAPTER XXV

### THE SENATE

The Senate according to the constitution is designed to be a deliberating moderating stabilizing influence. Its function is to impose at least a temporary check upon the exuberance of the deputies who are younger more numerous, and reflect a more direct expression of universal suffrage — *J. ph. Barthelémy*

For more than two centuries preceding the eve of the Great Revolution there was no parliament in France. The king was the source of the laws. But the revolutionary assembly changed this situation in 1789 by proclaiming that all legislative power resided in itself. And during the next three-quarters of a century France had a series of new constitutions some of which provided for a single chamber and some for a legislature of two branches. There was no fixed tradition but in general the monarchists preferred the bicameral system while the republicans felt that one chamber was enough. Hence the Third Republic began its career in 1871 with a single chamber—a national assembly it was called.

This national assembly it will be remembered was not merely a legislative body its task was to govern the country and it assumed the responsibility of providing a constitution at the same time. But it found the work of government much easier than that of making a constitution. More particularly it split on the question whether the new constitution should provide for one legislative chamber or for two. Without settling this question the assembly could not make headway in its task and for a long time the membership wrangled over it. The republicans wanted a single chamber while the anti republicans insisted upon having both a Senate and a Chamber of Deputies. In the end the anti republicans had their way. Their victory is embodied in the first of the three fundamental laws a law which outlines the organization of the Senate. The constitution of France as one writer has said is first of all a Senate—which is both chronologically and literally true.

THE EXISTING  
SENATE IS THE  
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The establishment of an upper chamber was a necessary concession to the monarchists, imperialists, and other conservatives who formed an influential bloc in the national assembly. They feared that a single elective house might too easily be stampeded by gusts of radicalism. They were influenced by exactly the same motives which swayed the framers of the American Constitution in 1787. It is significant that conservatism in all ages and in all countries has been partial to second chambers. But the makers of the French constitution were also influenced by the fact that the bicameral system had been adopted by every other country. The example of the United States—as repeatedly alluded to—had carried considerable weight because the American Senate at this time was proving itself to be an effective agency for restraining not only the lower house but the President as well. It had given considerable pleasure to French public opinion by refusing to ratify a treaty for the annexation of Santo Domingo which President Grant submitted to it in 1870.

THE  
ACTUATING  
MOTIVES OF  
THE CONSER-  
VATIVES.

But having agreed upon the principle of a bicameral parliament there was still the problem of determining how the members of the upper chamber should be chosen and this problem was to the national assembly a great deal of trouble. It was taken for granted of course that the Chamber of Deputies would be constituted on a basis of manhood suffrage. It was also assumed that the Senate would have to be constituted on a different basis otherwise it would not serve the purpose which the conservatives had in mind.

THE PROBLEM  
OF ORGAN-  
IZING THE  
SENATE.

How to devise a Senate that would function as a restraint on the Chamber of Deputies and yet not be too much of a restraint—that was the problem. France had a nobility in 1870 but it was a motley affair composed of frayed-out families whose lineage went back to the time of the Bourbons, and of sycophants who owed their titles to the favoritism of the Bonapartes. It was without prestige among the people. And in any event a House of Peers did not seem to comport with the forms or spirit of republicanism. On the other hand the American plan of having senators chosen by the states could not be adopted because there were no constituent states in France. Some new method of organizing the second chamber had to be found. The conservatives desired a Senate appointed for life. The radicals did not want a

THE CON-  
FLICTING  
VIEW.

Senate at all but insisted that if France must have such an institution the senators ought to be elected by the people

In the end it was decided that the Senate should be composed of 75 members appointed by the national assembly for life and 225 members chosen for nine year terms by electoral colleges in the several departments or administrative divisions of the Republic. The life membership provision was designed to supply the Senate with a strong conservative infusion for these life members were to be named by the national assembly which the conservatives controlled. It was their intention to throw a solid block of 75 monarchists into the Senate at the outset and thus to make sure that it would stay friendly for many years.

But the plan did not work out as expected. By reason of jealousy and dissensions among the monarchists it proved possible for the republicans to elect more than half the original 75 life members from their own ranks. Public opinion throughout France moreover soon came to regard appointive life tenure as an anachronism and within ten years this feature of the constitution was repealed (1884). Those senators who had been appointed for life were allowed to serve out their days but as they died or resigned their places were filled by the elective process. The last of the life senators passed off the stage several years ago.

#### PRESENT COMPOSITION OF THE SENATE

Today therefore the French Senate is composed entirely of elective members numbering 314 in all.<sup>1</sup> The senators who serve for nine years are chosen to represent the eighty-nine departments of France the three departments of Algeria and the various French colonies. Each department has from one to five senators the colonies have four senators among them. Senators from one third of the departments retire triennially. The selection is made by an electoral college which is convoked in the department for this purpose. This body is made up of four elements (a) the members of the Chamber of Deputies who represent the department (b) the members of the general council of the department (c) the members of the various arrondissement councils within the department and (d) delegates

<sup>1</sup> Alsace Lorraine was assigned thirty seats. If the senators of the three departments had stood in the election of 1919 for the departmental councils the total would have been thirty-five. Chapter XXXII

chosen by the municipal councils of all the communes (cities towns and villages) within the department. As there are more than 36 000 communes in France the communal delegates far outnumber all the other members of the electoral colleges and can usually control the election of senators. It is for this reason that the Senate is often called the great council of the communes.

The original provision was that each commune no matter what its size should have one delegate. But in 1884 it was provided that the communes should send from one to thirty four delegates according to the size of their municipal councils. The delegates are in each case chosen by the council. When there is one delegate only the mayor of the commune is practically always named when there are several delegates the mayor and various councillors are selected by their fellow members. But the various communes are by no means represented in strict proportion to the number of their inhabitants. In the electoral college of the department of Bouches du Rhone for example the great city of Marseille with half a million inhabitants is represented by twenty four delegates while various neighboring villages with a total population of less than 30 000 are represented by an equal number of electors. This is because no city with the exception of Paris is permitted to have more than twenty four representatives in an electoral college while every village however small is entitled to at least one delegate.

When the time for choosing senators arrives an electoral college is summoned to meet at the chief town of the department. Any French citizen forty years of age is eligible to be elected a senator provided he is not a member of any royal or imperial family that has ever ruled in France. There are no formal nominations each member votes his own ballot. The contest is conducted on straight party lines—as straight as party lines in France ever are. On the first ballot a clear majority of all the delegates is necessary to elect and the same true of the second ballot. But if the department's full quota of senators is not elected on the first two ballots a third ballot is taken and on this third ballot a plurality is sufficient. The electoral colleges are sometimes very large bodies with a membership running into many hundreds. Delegates are often

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pledged in advance the candidates make speeches (with plenty of promises) and the whole procedure takes on the color of an American nominating convention

It is unusual for anyone to be a candidate for the Senate until after he has made himself well known throughout the department

CHARACTER OF THE SENATORIAL CANDIDATES by holding other offices Most of the candidates are lawyers journalists rural landowners, or professional politicians who have served in the Chamber of

Deputies They esteem it a promotion to go to the Senate although the latter is the less important of the two chambers in point of power They are attracted by the greater prestige and by the longer term which election to the Senate assures At any rate there is a periodical migration of deputies to the upper house, much to the advantage of the latter The hegira endows the Senate with a nucleus of seasoned veterans They are usually well along in years when they get there (the average is well above sixty) Consequently a nine year term in the Senate often marks the closing of a political career On the other hand senators have sometimes become prime ministers and in a few cases have been elected to the presidency of the Republic

The Senate has not been so conservative a chamber as it was originally intended to be but it has justified the expectation that

GENERAL CHARACTER OF THE SENATE it would be composed of more mature more experienced and more distinguished statesmen than the Chamber of Deputies For the most part it has served as the reliance of those who want political

economic and social changes to come slowly and in an orderly way Age and experience usually lend sobriety to opinion Most French senators are men who are nearing the age of three score and ten Legislators at that age are not customarily under the illusion that mankind can be regenerated by enacting a few more laws The very fact that the senators are elder statesmen tends to make them conservative no matter what their party affiliations may be

In the general quality of its membership the French Senate has set a good standard Lord Bryce writing in 1921 declared that no

ITS R SO EL. other legislative body has in modern times maintained a higher standard of ability and integrity The Senate is not especially popular in France but

There is a good discussion of the French senatorial temperament in W L Mudditt's *The French Political System* (New York, 1933) pp 170-181

it commands respect and has firmly entrenched itself in the parliamentary system there. Its lack of positive popularity arises in part from the fact that its power as a legislative body is not dynamic. Its function is to serve as a brake on the machine, not as an accelerator. Legislative chambers with that function do not usually stir the public imagination.

Despite the high quality of its membership and the measure of respect which it has gained among the people, the Senate is often subjected to sharp criticism. Among other things its critics complain that the system of indirect election is clumsy and results in the gross overrepresentation of small towns and of rural districts. One hears exactly the same complaint regarding government by yokels—that is so frequently made against the state senates in eastern portions of the United States. Many Frenchmen believe, moreover, that the nine year term is too long especially since the senators are chosen by delegates who may themselves be three or four years away from the people. It is possible for a senator in the closing year of his term to be twelve years distant from the action of the voters. In its mental attitude, therefore, the French Senate may be a decade behind the times.

Complaint is also made that the Senate is so wedded to the tradition of seniority that new members, however competent, can exert very little influence upon its deliberations. In his first year as one rather facetious observer has remarked, the newly elected senator does not venture into the Senate chamber at all but remains in the lobby. In his second year he slips into a back seat. In his third year he votes. In his fourth he asks for a place on some small committee and in his fifth year he gets it. In his sixth year he makes a report on some minor question. In his seventh comes his first speech. In his eighth he speaks twice and in his ninth year he is defeated for reelection. An exaggeration of course, but with a modicum of basis for it.

Many projects for reorganizing and liberalizing the French Senate have been put forward during the past forty years, but no tangible results have come from any of them. The Senate of course does not want to be reformed and there is no way of reforming it against its own will. No change can be made in the organic law of 1884 without its concurrence and French senators are like all other legislators in their disinclination to be thrown out of office. Moreover, it is much easier



to pick flaws in the present organization of the Senate than to agree upon a substitute. If the reformers could unite on a definite plan of reorganization there would be some hope of its ultimate adoption despite the Senate's opposition for a second chamber will always bend to the will of the nation when that will is clearly made manifest. Both the House of Lords and the Senate of the United States have done this during the past thirty years. But in France the proponents of senatorial reform have not been able to get together upon any plan. There are almost as many plans of reform as there are reformers. So the Senate amid the babel of jarring voices goes placidly on. Whenever it rejects some legislative innovation there is an outburst of popular protest which generally subsides after a while. Then a fresh outburst comes and takes the same course. The Senate has been wise enough to keep within the line where its own existence might become a real issue.

Both the Senate and the Chamber of Deputies ordinarily meet at the same time and their sessions come to an end simultaneously.

**THE SENATE MEETING PLACE** The deputies are never called into session alone but the Senate may be summoned in special session for the purpose of hearing an impeachment. In Great Britain and the United States the two legislative chambers meet under the same roof but this is not the practice in France. The French Senate holds its sessions in the Luxembourg Palace a structure which is redolent of historic memories.<sup>1</sup> It has many magnificent rooms and corridors richly decorated with tapestries and with carvings in wood. The Senate chamber is in the form of an amphitheatre with eight rows of arm chairs upholstered in red velvet rising tier on tier. Directly in front of them is the tribune from which the senators (or the ministers when they are present) make their speeches. Behind the tribune sits the president of the Senate with various officials on either hand while grouped around them are splendid marble statues of the great chancellors who laid down the law in olden days—Turgot, D'Aguesseau, Colbert and the rest. On the lawmakers of a modern republic these faces of stone look down.

This mansion built in the reign of Louis XVIII. by the architect of the Revolution was built in the style of the 18th century. For modern and as modern by modern by Napoleon I. During the period of the Revolution it was used as a prison. It served as a gallery for the Emperor. The Senate of the Third Republic has used it since 1879.

The Senate elects its own president, and this official ranks next to the President of the Republic among the officials of state. He has the usual powers of a presiding officer including its re- disciplinary powers but these he has no occasion siding OFFICER to use for the Senate is an exceedingly well behaved body. Its decorum is almost oppressive. To pass from the Palace Bourbon, where the deputies foregather to the mansion of Marie de Medicis is to breathe a different atmosphere. Instead of a gavel the president of the Senate uses a bell which tinkles melodiously at each stage in the advance of business. The Senate also elects from among its own members a vice-president and a committee of management which performs various functions especially in arranging the order of business. The debates are stilted and usually tiresome they lack the excitement which accompanies the resounding oratorical jousts in the lower house. The Paris newspapers pay relatively little attention to them. Nevertheless most of the speeches in the Senate are well prepared and carefully thought out. They read well in print and many of them have permanent value. Senators of France are paid for their services and have the usual immunities of legislators—freedom from arrest and freedom of speech—subject to the customary limitations.

## THE SENATE'S POWERS

It was the intention of those who framed the French constitutional laws that the Senate should be at least co-equal with the Chamber of Deputies in authority and influence. The conservatives in the national assembly cherished the hope in fact, that the Senate would be the more powerful of the two chambers. So far as the express provisions of the constitution go there is no reason why it should not be for the constitution makes the ministers responsible to both chambers. It allots to the Senate an equal share in the making of all laws with the single exception of money bills which must originate in the lower house. And it gives the Senate two special powers which in 1875 were deemed to be of great importance namely the right to serve as a high court of impeachment, and the power to join with the President of the Republic in ordering a dissolution of the Chamber of Deputies.

But the expectations of those who planned the powers of the French Senate have not been fulfilled. It has become distinctly

GENERAL  
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the less influential of the two chambers. This is partly because all previous upper chambers in France had occupied a subordinate position and a tradition of inferiority had thus become established. It is also because the Chamber of Deputies with its members chosen for short terms by direct manhood suffrage has assumed itself to be more truly representative of the people and has arrogated powers on that assumption. It has taken virtual control of the ministry and control of the budget although the constitution does not give it control of either. The Chamber of Deputies has quietly gathered this authority under its wing just as the Senate of the United States has usurped a virtual right to initiate money bills by the expedient of mass amendments. All of which supplies another illustration of the axiom that the wording of a constitution does not always afford a dependable clue to the facts of government.

What are the powers which the French Senate now exercises? Let us begin with its special prerogatives. The right to join with the President of the Republic in dissolving the Chamber of Deputies is the first of these. It is a unique function of an upper chamber. In Great Britain the House of Commons may be dissolved at any time by the crown on the advice of the cabinet in the United States the House of Representatives may not be dissolved by anyone under any circumstances. But the French constitution expressly stipulates that the President of the Republic may dissolve the Chamber if the Senate concurs. This was thought by the framers of the constitution to be a power of supreme importance. Among other merits it was believed to be useful as a safeguard against a possible *coup d'état* by some ambitious chief of state.

But the Senate's power to join with the President in dissolving the Chamber of Deputies has turned out to be a prerogative of very little consequence. The reason for this dates that the makers of the French constitution did not clearly envisage the actual workings of the government which they were setting up. They provided that every official act of the president must be countersigned by a responsible minister. That meant of course that a decree dissolving the Chamber of Deputies like any other presidential decree would have to be so countersigned. In other words it is the ministers,

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not the President of the Republic who must take the initiative in asking the Senate to concur in a proposal of dissolution. But it stands to reason that no ministry will ever propose a dissolution of the lower chamber so long as it retains the support of a majority in that body.

So what the framers of the constitution really did was to give the ministry with the concurrence of the Senate an opportunity to dissolve the Chamber whenever the latter showed itself hostile. If actually put into operation that arrangement would be intolerable. It would lead to dissolutions and general elections every few months because ministries are rarely able to keep control of a majority in the Chamber of Deputies very long. Usage has therefore decreed that the power of dissolution shall not be put into practice at all. Only once in fifty years has the Chamber of Deputies been dissolved before the expiry of its four year term and the outcome in that case was not such as to encourage any repetition of the experiment.<sup>1</sup> Nevertheless there are many serious students of French government who believe that a regular use of the power of dissolution would in time conduce to ministerial stability.

The second special prerogative of the Senate is that of serving as a high court of justice for the trial of the President of the Republic or the ministers or to take cognizance of assaults on the security of the state. According to the constitution the president may be impeached for high treason only but a member of the ministry may be haled before the Senate for any offense committed in the exercise of his official functions. For assaults on the security of the state the Senate may try any person whatsoever whether he be a public official or not.<sup>2</sup> In such cases a presidential decree convokes the Senate into session as a high court of justice.

The first step in an impeachment is ordinarily taken by the Chamber of Deputies which frames the charges. But in the case of assaults upon the security of the state the accusation is not made by the Chamber but by the ministry. On three important occasions within the last fifty years the ministry has brought such accusations against men of prominence in French public life a fairly recent instance being that

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MENTS.

<sup>1</sup> See above p 42.

<sup>2</sup> Thus, it will be noticed that the United States

has greater power than is possessed by the Senate of

of Joseph Caillaux in 1920.<sup>1</sup> A bare majority in the French Senate is sufficient to convict whereas in the Senate of the United States a two thirds majority is required.

So much for the Senate's special and exclusive powers. It has been mentioned that the lawmaking authority of the French

**THE SENATE'S SHARE IN LAWMAKING** Senate is ostensibly co-equal with that of the Chamber of Deputies save in one respect namely that money bills must be first presented to the lower house and

**1 MONEY BILLS.** passed by it before going to the Senate. Whether the Senate may amend such bills by increasing or decreasing the items at its discretion the constitution does not say. It simply provides that money bills shall be first introduced in and passed by the Chamber of Deputies.

But here again usage has made the silence of the constitution articulate. The matter was for a time in doubt and gave rise to

**OFFSET BY USAGE** repeated controversies between the two chambers but in the end the Chamber of Deputies triumphed and its right to have the final word on all money

matters is now virtually conceded. The Senate continues to offer amendments when money bills come before it. But it cannot insert new items or increase old items except upon the proposal of a minister. Hence its amendments are restricted to decreasing or striking out items which are already in the bill. If the deputies agree to such amendments when the measure goes back to them well and good. But if they do not agree the Senate usually gives way. This as a prominent senator once explained is a matter of expediency not of law. But whether it be a matter of law or policy the effect is the same. The Chamber of Deputies in France like the House of Commons in Great Britain has gained virtual control of the national purse.

Strangely enough the House of Representatives in the United States does not have this financial supremacy although such was

**AN AMERICAN CONTRAST** the avowed design of the men who framed the constitution.<sup>2</sup> They intended that the lower branch of Congress should be the dominant factor in public

Caillaux, a former prime minister was accused of intrigues with the Germans during the war. He was indicted and sentenced to three years imprisonment and to the loss of all political rights for five years. But in 1924 his civil rights were restored to him and he again became prime minister. French politics.

All bills for raising revenue shall originate in the House of Representatives.

finance James Madison indeed predicted that the provision which confers on the House of Representatives the sole right to originate bills for raising revenue would unquestionably make it so. But Madison proved to be a false prophet. The Senate of the United States has developed greater influence than the House not only in matters of general legislation but in the making of the tax laws. By the terms of the constitution it cannot originate bills for raising revenue and by usage it cannot originate bills for the spending of money but when a bill of either sort comes up from the House it can strike out everything except the preamble and substitute what is practically a new measure of its own. The Senate of France has acquired no such authority.

On all measures other than money bills the equal authority of the French Senate has never been seriously questioned. Such bills may be originated in the Senate but most of them are in fact first brought before the Chamber of Deputies. If they pass this chamber they go to the Senate where they may be rejected or amended at will. When the two chambers disagree on amendments the bill is not sent at once to a conference committee as is the practice in the Congress of the United States. It merely travels back and forth from one chamber to the other. Meanwhile the leaders confer and try to reach a compromise. Sometimes each chamber appoints a committee to help effect an agreement and these committees may confer but they make no joint report. If the measure is one that has been sponsored by the ministers it is their concern to find a solution of the deadlock and they try to do it by wheedling the respective followers into line. But if the Senate decides to stand its ground the measure fails to become a law. A good many bills have perished in this way.

The function of the Senate is to resist says Ba thelemy and in its own way it fulfils this function But rarely does it carry its resistance to the point of open rupture It prefers to pass a bill so that some measure has been hurried through the Chamber of Deputies without adequate discussion the Senate merely refers it to a committee and the bill stays until public opinion can be sounded Other problems then engage the interest of the deputies and the matters which repose in the files of Senate committees are

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sometimes forgotten. In any event the original ardor of the deputies has time to cool down and compromise then becomes more easy.

The Chamber of Deputies on some occasions, has taken a money bill and tacked some non financial reform to it in order that the

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Senate may be debarred from rejecting the latter

But this parliamentary subterfuge has not usually succeeded. The Senate merely separates the irrelevant provision from the main bill and sends it to a committee for study. It does this at times with proposals

of fiscal reform which are included in the budget—taking the ground that the budget must be passed speedily but that other reforms can wait.

In general the Senate has been hostile to new forms of taxation. For years it stood out against the imposition of an income tax. It

ITS ATTITUDE  
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has resisted proposals which aim to put an undue share of the tax burden upon inheritances and has displayed on the whole more solicitude than the

Chamber of Deputies for the safeguarding of property rights. On the other hand it has deferred to public sentiment, as embodied in the labor program of the Popular Front (a majority bloc in the Chamber) during the past few years. And there have been times, with a conservatively minded ministry in power when the Senate has shown itself the more liberal of the two chambers. All in all it has served its purpose as a balance wheel.

The average Frenchman is neither a congenital reactionary nor a rampant radical. He wears his heart on the Left and his pocket

A REFLECTION  
OF THE  
FRENCH TEM-  
PERAMENT

on the Right. Accordingly he often finds that his sympathies are with the radicals while his interests are with the conservatives. That being the case the

Chamber and the Senate although openly in disagreement, may both represent him faithfully. One mirrors his political philosophy the other his social and economic bias. The Chamber is his Don Quixote the Senate his Sancho Panza. It has often been remarked moreover that Frenchmen have good memories—in politics. They have not forgotten that the Senate saved France from the danger of a Boulangist dictatorship fifty years ago and from the folly of a general levy on capital after the war. They know full well the weakness of the lower chamber which is to let itself be swayed by eloquence into hasty and ill-considered action.

Nearer than any other European legislative body in short,

the Senate of France approaches the ideal of what a second chamber ought to be. For the prime purpose of such a body is to serve as a counterpoise to the volatility of a popular chamber. It should revise, suggest, find fault—and delay when necessary. It should interpose obstacles, but not insuperable ones, to the fevered impatience of younger politicians. To this end a second chamber should be constituted differently, but not too differently, from the other branch of the lawmaking body. The difference must not be so great that strong currents of public sentiment will affect one house and leave the other unmoved. A well-organized second chamber should try to represent the interests rather than the opinions of the people (as Edmund Burke once phrased it), but on the other hand it should never stand out too stubbornly against a strong tide of public opinion on any great issue. For if it does not bend it is apt to break—as the British House of Lords discovered in 1911.

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An excellent survey of the Senate's organization and work may be found in A. Esmein, *Doctrines constitutionnelles* (8th edition, 2 vols., Paris, 1927), Vol. II, pp. 333-478, and in G. Coste, *Régime législatif et politique du Sénat sous la III<sup>e</sup> République* (Montpelier, 1917). Attention may also be called to J. B. Barthélemy, *Le Sénat français de la III<sup>e</sup> République* (2nd edition, Paris, 1924), chap. v. There is an English translation by J. B. Morris (New York, 1924). The same author's volume on *Le Sénat français de la III<sup>e</sup> République* (Paris, 1913) is interesting. See also E. M. Sait, *Governments and Politics of France* (New York, 1920), chap. v, and the chapter on "The Power of the Senate" in W. L. Middleton, *The French Political System* (New York, 1933).



## CHAPTER XXVI

### THE CHAMBER OF DEPUTIES

Every large body of men not under strict military discipline, has lurking in its traits of a mob and is liable to occasional outbreaks when the spirit of disorder becomes epidemic but the French Chamber of Deputies is especially tumultuous.—4 *Laurens* *Loc. cit.*

In the constitutional laws of 1875 there is a great deal about the composition and powers of the Senate but scarcely a word concerning the Chamber of Deputies. Save for the provision that its members shall be elected by universal suffrage the organization of the Chamber was left to be determined by ordinary legislation.<sup>1</sup> There were two reasons for this action. In the first place no differences of opinion existed in the national assembly as to how the Chamber should be organized. Everybody assumed that the lower branch of the legislature would be made up of members directly elected by the whole people. That being the case it did not seem to matter very much whether the election took place under one form of procedure or another. In the second place it was felt that much might be gained by leaving the organization of the Chamber flexible. Before it dissolved however the national assembly adopted an organic law in which the method of electing deputies was prescribed, but the provisions of this electoral law have been amended several times since 1875.

As at present constituted the Chamber of Deputies consists of 617 members.<sup>2</sup> It is therefore one of the largest elective chambers in the world. The deputies are chosen for a maximum term of four years. The right to vote extends to every male citizen of France twenty one years of age or over who has been duly enrolled on the voters list of any commune (or municipality) as having been a legal resident for at least six months.

The term universal suffrage has been interpreted in France to mean manhood suffrage.

Of these 10 are allotted to certain French provinces, 9 to Algeria, 26 to Alsace-Lorraine and the rest to France as it was before the war.

prior to the compilation of the list. Persons in the active military or naval service and those who have been deprived of civil rights by judicial decree are excluded from voting. There are no educational tests for voters in France as in some of the American states and no taxpaying requirements. There is no plural voting as in England no absent voting as in America and no compulsory voting as in Belgium.

Women are still excluded from voting in all French elections although repeated attempts have been made to give them suffrage rights. The Chamber of Deputies on one occasion passed by a large majority a bill to abolish the sex qualification but the Senate by an equally decisive vote rejected the proposal and it has since on several occasions declined to reconsider its action. And strange to say it is not the conservatives but the radicals who are mainly responsible for this. The women of France are more attached to the Catholic Church than are the male voters hence woman suffrage might strengthen the influence of clericalism which is the last thing that the radical groups in France desire. So democracy as one keen witted Frenchman has ironically remarked must be protected against itself for what good is democracy unless it helps its own friends? One is reminded of the legendary Ugolino who devoured his own children so that they would never be fatherless.

France is one of the few great countries in which women have not been enfranchised. Yet the issue is not a major one in French politics. Certain organizations are keeping it alive but the great majority of the women in France do not seem to be seriously disturbed about their deprivation of electoral privileges. Nor are their husbands and brothers greatly concerned about it despite the fact that Frenchmen have placed so much emphasis upon natural rights. Some day sooner or later woman suffrage will doubtless be granted in France but the step does not seem to be immediately at hand.

During recent years there has been much discussion of a proposal for family voting in France. In brief the father of a family under this proposal would be given one or more extra votes depending upon the number of his children. Concerning the details of such a plan there is much difference of opinion and a half dozen schemes have been

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NO WOMAN  
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POSAL  
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<sup>F</sup> a discussion of this subject is given in *Le rôle de la femme en France* (Paris 1929).

worked out. Difficulties arise with respect to the electoral status of widows who are heads of families and as to the position of unmarried daughters who are over age. What provision should be made for them in a system of family voting? The general argument in favor of *le vote familial* is that the family not the individual is the true unit in the social organization and that representative bodies chosen by a system of family voting will represent the people in terms of this true unit. On the other hand the proposal is open to various objections of a practical sort.<sup>1</sup>

Although the qualifications for voting are fixed by general law and hence are the same at all French elections—national departmental and local—the work of compiling the voters lists is entrusted to the local authorities. In each commune or municipality the responsibility for preparing the *liste électorale* rests with a commission of three persons namely the mayor a representative of the municipal council and an official named by the prefect of the department in which the commune is situated. This commission first revises the old register by using information which is on file at the *mairie* or city hall.<sup>2</sup> Then the revised list is posted and if there are any wrongful omissions or inclusions the interested parties may file protests. Such protests are considered by the electoral commission whose membership is enlarged for this purpose by adding two additional representatives of the municipal council. And if the decisions of this enlarged commission do not satisfy there is an appeal to the administrative courts.

Apart from errors or oversight the names of voters are placed upon the list without any action on their own part. There is nothing corresponding to the English method of sending canvassers from house to house gathering the names of voters or the American plan of calling on the voters to come and get themselves registered. There is no occasion to use either of these methods because all the essential information is on file in the office of the mayor. The records of the *état civil* contain the names of all who have moved into the commune during the year or out of it. They also list the inhabitants who have died or who have come of age or who have lost their civil rights since the list was

<sup>1</sup> For further information on this topic see E. Harriss, *Sur le vote familial* (Paris, 1930).

<sup>2</sup> A perpetual census is maintained in every commune as a basis for the *liste militaire* or of compulsory military service.

last revised. Owing to the accuracy of these records there are relatively few wrongful omissions or inclusions to be found when the list is posted.

### ELECTION METHODS

France has tried since 1875 various methods of electing deputies. During the first ten years the elections were based upon single member districts as in England and the United States. But this plan to which the French gave the name *scrutin d'arrondissement* was deemed unsatisfactory because it seemed to concentrate the attention of each deputy upon the interests of his own district rather than upon those of France as a whole. The districts were small and it is an axiom of government that small districts elect small men. As Gambetta once said it made the Chamber of Deputies a broken mirror in which France could not recognize her own image.

So a plan of election by general ticket or *scrutin de liste* was adopted in 1885. Under this system the voters of each department (a department is the largest administrative district in France) chose four or six or ten deputies according to its population. But the plan of election at large also failed to satisfy. It failed to provide minority representation; it played into the hands of demagogues as the Boulangist upheaval showed and did not produce any noticeable improvement in the quality of the men elected, so the old method of election by single member districts was restored. But not to much purpose for the dissatisfaction with it soon flared up again. After the close of the World War there was an agitation for the use of proportional representation and provision for it was made in 1919. Two general elections were conducted under this arrangement but on the whole it satisfied the people even less than the preceding plans had done.<sup>1</sup> So finally in 1927 the method of *scrutin d'arrondissement* or single member districts was restored. Thus France after fifty years of experimenting has come back to the plan of election from which England and America have never departed.

Any French citizen twenty-five years of age or over is eligible to

<sup>1</sup> An explanation of the French proportional representation (as it was used from 1919 to 1927) may be found in H. L. M. Bain, *La députation*, Paris, 1927, pp. 107-108.

be a candidate for deputy There is no formal nominating procedure Any candidate can nominate himself But the various party groups have their own machinery for selecting and announcing candidates No ballots are prepared by the election officials but a merely formal declaration of candidacy is now required in the case of Chamber elections

Each candidate or each party group prepares its own ballots which can be sent through the mails free of postage to all names on the voters list Candidates are allowed to enclose along with the ballot a single circular of limited size Both the ballot and the circular while prepared by the candidate or his party group and paid for by them are printed by the public authorities This is intended to keep all the ballots uniform in size shape and color When the voter goes to the polls he takes one of these ballots with him (the one that he favors) he does not mark it in any way but merely seals it in an envelope and drops it in the ballot box

A general election in France takes place on a date fixed by presidential decree but it must come within sixty days preceeding the expiry of the four years for which the Chamber is elected It is always held on a Sunday it being assumed that Sunday is the most convenient voting-day for everyone wage earner and employer alike It also affords (what Frenchmen value highly) a chance for the voters to congregate around the polling place most of the day arguing about the issues the candidates and the probable outcome

The advantages of holding elections on Sunday are so obvious as to raise the question whether Americans might not profitably follow the Continental practice The most convenient places for polling are the schools which are always available on Sundays The American practice of week-day balloting involves a slackening of industrial production on election day which is estimated at from ten to twenty per cent due to the fact that workers are given time off to vote And elections come oftener in the United States than in European countries

There would be objections to such a proposal of course Many puritanical souls would regard the holding of an election on Sunday as a new form of Sabbath desecration But it would surely be a no greater profanation than the professional ball games the motion picture shows or the bathing beach spectacles which now attract thousands of good

American citizens every Sunday afternoon when the weather is fine. If voting is a sacred duty (as we are so often assured from the church pulpits) why should there be serious objection to the performance of such a duty on a day that is consecrated to sacred things? The better the day the better the deed. One should hasten to add however that sentiment rather than logic is what determines this matter in America and it is likely to keep on doing it.

Polling places in France are designated by the prefects and sub-prefects who are national officers. Schoolhouses and other public buildings are generally used. A few days prior to the election a notice (*carte elettorale*) is mailed to every voter whose name is on the list informing him of the place and date of polling. On entering the polling room the voter presents this card which identifies him. Then he is given a plain envelope with which he retires into a screened compartment. There he takes from his pocket the ballot which he has selected from among those sent to him by mail, puts it into the envelope, seals it up, and drops the sealed envelope in the ballot box.<sup>1</sup> The polling officials need do nothing but look at his card and give him the envelope.

In the villages and small towns where there is only one polling place the mayor acts as chief election officer, attended by four members of the municipal council who serve as his assistants. These five constitute the bureau of the poll and by a majority vote decide all questions that may arise. In the larger cities where there are several polling places the mayor presides at one of them and designates various councillors to preside at the others. A bureau is similarly constituted for each polling place. All these officials give their services free—which is in sharp contrast with the American custom. In the United States everybody who serves in a polling place expects to be paid.

Voting begins at eight in the morning and continues until six in the evening or at five in the afternoon as fixed by the prefect. After the voter has voted he is permitted to stay in the polling room as long as he desires. Hence the room is often so crowded that the members of the polling bureau find difficulty in doing their work. The air is dense with tobacco smoke through which can be discerned a general shrugging

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<sup>1</sup> If he has forgotten to bring his ballot he can write the name of his candidate in large letters and put it in the ballot box.

of shoulders and waving of hands as spirited arguments are conducted by the groups of partisans. Occasionally the arguments grow so warm that the presiding officer calls in a gendarme and instructs him to clear the room but this must not be done unless the commotion makes it absolutely essential. In France the laws regard the polls as places of public meeting where the voters settle the issues in person. Hence an election can be voided if the polling officials unnecessarily interfere with the voter's inalienable right to discuss the destinies of the nation with all the accompanying pantomime in full view of the ballot box.

When the poll is closed the ballots are counted by members of the polling bureau. But if a large vote has been cast the officials may call upon bystanders for aid as they frequently do. The room is as crowded as ever even more so and the counting proceeds with some difficulty. Any outsider who has seen it will marvel that accuracy can be obtained in the result. Yet the count is on the whole more accurate than in American polling places where a policeman keeps everybody except the officials out of range while the count is being made.

In order to be elected a candidate must receive a clear majority of all the polled votes. If no one meets this requirement a *ballotage* or supplementary election is held on the Sunday following and at this election a plurality is sufficient. Thus the plan works out pretty much as under the usual American scheme of primaries and final elections with this difference however that the two pollings in France are only a fortnight (not a couple of months) apart.

If disputes arise concerning the results of an election they are decided by the Chamber under the constitutional provision which empowers it to determine the qualifications of its own members. Controversies are referred to committees but the recommendations of these committees are not always accepted by the whole Chamber. The latter's action is largely influenced by partisan considerations. Protests may be filed on grounds of intimidation bribery or corruption and if the Chamber upholds these protests it will annul the election. Then a new election is ordered. But the Chamber cannot impose any other penalty upon candidates who have been guilty of electoral corruption. They may however be prosecuted in the courts.

There is no law which limits the amount which a candidate may

legitimately spend in getting himself elected to the French Chamber of Deputies. So long as he does not spend it corruptly he may pay out as much as he likes and is not required to publish a statement of his expenditures. In England and in the United States there are stringent laws relating to maximum political expenditures but in France there are no limitations of this sort. Nor does there seem to be need for any since public opinion usually provides an adequate check. An outpouring of money on behalf of any candidate or group of candidates is likely to defeat its purpose in France for the people are not accustomed to it and would resent the innovation. The laws moreover do their best to assure each candidate an equal chance—for example by providing free billboards giving every candidate his due share of space on them and forbidding *affiches electorales* or campaign posters to be put up anywhere else. At the last election more than 10 000 of these free billboards were provided for the candidates in Paris.

LECTION X  
NDITURES

Candidates and party groups spend a good deal of money in France as elsewhere. While it is difficult to make an exact comparison there is reason to believe that an election campaign costs about as much in France as in Great Britain.<sup>1</sup> Campaigns and elections on the whole are conducted fairly and save in very exceptional instances the ballots are counted honestly. Lord Bryce however tells a story of one polling place where as the hour for closing approached it was found that only a small vote had been cast. The mayor of the commune on being informed of this said in a cryptic whisper to the polling officials: "It is your duty to complete the work of universal suffrage"—and presumably they obeyed orders. Sometimes in a hotly contested election the rival partisans have invaded the polling place and engaged in a fist fight during which the ballot box was smashed open and the ballots scattered to the four winds of heaven.

ABSENCE O  
LECTORAL  
FRAUD

At any rate the neighboring *estaminets* do a good business on election day and politicians sometimes foot the bills. Places which sell intoxicating beverages are not closed in France on election day as they are in America. Employers are alleged to be over zealous at times in persuading their workers and in rural districts it is sometimes said that the landlords bring pressure to bear on their tenants. A generation

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<sup>1</sup> For a discussion of this and related matters see J. K. P. Block, *Money and Politics in France* (New York, 1932) especially pp. 284 ff.



ago it was contended by the radicals that the priests in many parts of France were exercising too much political influence over their parishioners but today this complaint is seldom heard. Pressure now comes chiefly from the prefect the subprefect and other public functionaries. Some of these officials are quite obtrusive in their efforts to secure the election of deputies who will support the ministry. A ministry which is in power when the election comes has an advantage over its opponents by reason of the influence which it can persuade these officials to exert. Even in this respect however conditions are better than they used to be. With changes in ministries likely to occur at frequent intervals the prefects hesitate to commit themselves unreservedly to any candidate or party group. For although they cannot be summarily dismissed for activity in politics they can be demoted by transfer if they hitch their chariots to a falling star.

#### ORGANIZATION MEMBERSHIP AND POWERS

The Chamber of Deputies meets each year on a date fixed by the constitution. It is not called together at the discretion of the ministry as is the British House of Commons. But in case of emergency the President of the Republic may call it together at an earlier date than that fixed by the constitution. Two sessions a year are held one beginning in January and lasting until July the other beginning in November and continuing through December. This short session is devoted chiefly to a consideration of the budget. With the exception of about three months therefore the Chamber is continually in session. The daily sittings begin at two o'clock in the afternoon and last until six or seven. When the urgency of business requires longer daily sittings the Chamber meets earlier in the day. It rarely prolongs its sessions into the night. Since 1879 the sessions have been held in the Palais Bourbon a stately building with a Corinthian peristyle which stands on the left bank of the Seine directly across from the Place de la Concorde.

The hall in which the deputies hold their sessions is semicircular in shape with a dozen or more rows of seats. Each seat except those in the front row has a small desk hinged in front of it. The front row is reserved for ministers undersecretaries and other executive officers as well as for members of committees who are present in connection with the business.

THE  
CHAMBER'S  
SESSIONS

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of the day. Behind them the rows of seats are elevated like those of an amphitheatre. Facing the semicircle is a high chair in which the president of the Chamber sits, and in front of this, on a somewhat lower level, is the tribune from which the members address the House.

A deputy is allowed to speak from his place on the floor if he so desires, but as a rule he obtains recognition from the floor and then mounts the tribune, where he can face his entire audience. This method of conducting the debates is in many of its practical aspects quite superior to the plan pursued in the English House of Commons and in the American House of Representatives for it ensures every member a chance to hear what is being said. There is no breaking in upon deputies while they are speaking, asking them to 'yield the floor' as in Congress. On the other hand interruptions in the way of shouts and ironical cheers from some sector of the amphitheatre are not infrequent. It should be explained that the seats are assigned in sectors to the various political groups, the conservatives being given the extreme right and the communists the extreme left, with the moderate groups between. There are galleries to which outsiders are admitted except on days when the Chamber decides to meet in secret session.

The constitutional laws of 1875 contain the curious provision that both the Chamber of Deputies and the Senate must remain in session for at least five months in every year, even if there is no business for them to do. But this provision has not given rise to any embarrassment because there has always been enough work to keep both Houses busy for an even longer period. Anyhow the chambers can adjourn if need be, and the recess would be counted in reckoning the five months. The President of the Republic may adjourn both chambers for a period not exceeding one month, subject to the restriction that he must not do this more than twice during the same session. When the two chambers have been sitting for five months he may bring their sessions to an end by a decree at any time. Finally he may dissolve the Chamber of Deputies with the consent of the Senate, but this power has not been exercised for more than sixty years.

As for the men who make up the Chamber of Deputies there is a general impression that they do not average up to the standards of the British House of Commons. It is difficult to tell how much real

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basis for this impression there may be because the quality of the men who sit in legislative bodies is something that does not lend itself to statistical computation. There are no yardsticks wherewith to measure legislative capacity. It is all a matter of individual judgment colored by patriotism or the lack of it. One may doubt, however, that the general impression is well founded in this case although it is quite true that the practice of electing deputies from small districts has tended to fill the Chamber with local politicians. It has helped to lower the position of deputy to that of a patronage seeker. His mandate to Paris is less that of a lawmaker than that of a village ambassador. A large portion of his time must be spent in finding jobs for the pay roll patriots of his arrondissement, visiting the ministerial offices in quest of favors and serving as a messenger for everybody who has official business at the capital.

Certain it is at any rate that to an outsider the deputies do not look impressive. Most of them dress carelessly and look unkempt. This is true even of some who are men of world renown. The average deputy it is said goes home every Friday evening and gets back to Paris on Tuesday with a clean collar and a new grist of errands for his constituents. Incidentally he travels free on the railroads which is why he goes home so often. The decentralization of parties in France undoubtedly has had an influence upon the kind of men elected to the Chamber. It has given a great advantage to those candidates who can intrigue and form alliances whose political principles are not firmly fixed and who are willing to compromise for votes. Such men are not likely to be conspicuous for their dignity or poise.

Yet His Serene Highness the deputy is a pivotal figure in French government. He is local leader and boss combined. Ministries rise or fall at his command. He is looked upon as the real sovereign of France says Siegfried by the millions of nobodies who make up the French nation.<sup>1</sup> And often he acts the part. The deputy's attitude toward the ministers or even toward the President of the Republic is not one of quiet deference as is the corresponding relation in England and America. President, ministers and prefects may be the government of France but the deputy is the people of France. *L'Etat c'est moi*—if he doesn't say it he often thinks it.

The Chamber of Deputies is unlike the House of Commons in that very few of its members come from families allied with the old nobility. It contains no considerable element analogous to the English squires or country gentlemen. There are many large landowners in France especially in the western part of the country but few ever get themselves elected. Unlike the American House of Representatives moreover the Chamber of Deputies does not contain a large number of men who directly represent the interests of agriculture industry and commerce. It includes relatively few men who have ever worked with their hands. The largest element is made up of professional men—lawyers physicians journalists retired public officials educators—and always a good many professional politicians.

Frenchmen complain that there has been a steady decline in the standards of ability independence and intelligence among their lawmakers during the past fifty years. In this they are not unique for one hears the same complaint in England and America. They grumble that there are no Thiers and Gambettas in the Chamber of Deputies today just as Englishmen lament the absence of Disraelis and Gladstones in the House of Commons while Americans seek in vain for Websters and Clays among contemporary congressmen. The trouble is that everywhere the world idealizes the men of the past and exalts them to a pedestal on which their contemporaries could not have placed them. A legislative body may give a popular impression of mediocrity for the mere reason that the times give it nothing heroic to do.

In general the membership of the French Chamber nowadays carries a strongly bourgeois flavor. A man belongs to the bourgeoisie in France if he has saved some money (but not too much) or has a business of his own (not too large) or practices a profession (but not too successfully) or owns some hectares of good land (but not too many)—in other words if he ranks in what Englishmen term the middle class. Men from this category usually begin their apprenticeship in a municipal council. Then having been elected to membership in the Chamber the bourgeois deputy combs Paris for a modest room in some section where the American tourist has not yet stimulated the landlords to higher rentals. He shies at silk hats and swallow tail coats rides to the Palais Bourbon on the underground or in a bus gets his meals *en pension* and votes against proposals to raise taxes.

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But the average deputy is a better man than he looks. He will surprise you not only with a level head but with a silver tongue. Most members of the Chamber can speak eloquently, lucidly—and fast. Nowhere will one find better diction than in the French lower house unless it be in the French upper house.

Members of the Chamber are paid sixty two thousand francs per annum (about \$1 600 at the present rate of exchange). This is ab-

**DEPUTES  
ARE POORLY  
PAID** surdly low. But they also receive allowances for secretarial help and for the entertainment of constituents who come to Paris. There is also a fund out of which pensions can be paid to needy ex-deputies as well as their widows and orphans. A small deduction is made from the pay of each deputy for this fund. But everyone who is elected to the Chamber expects to go higher and thus to obtain a larger emolument from the public purse. He has visions of ultimately becoming *ministre* and getting a place in the ministry. Since ministries are frequently re-constructed this hope is by no means a forlorn one.

Meanwhile the deputy dearly earns his modest stipend by serving as errand boy extraordinary for those who have the votes at home.

**THE DEPUTY'S  
WORKING DAY** His daily route is to the various bureaux and back again. For the ministers and their chief subordinates dispense the honors, the medals and the tricolored buttons, the administrative posts, mostly of small consequence, the tobacco licenses and the college bursaries. To them the deputy goes when his commune or arrondissement desires a bridge or a road, when a farmer wants to be compensated for damage done to his vines by a hailstorm, when a taxpayer disputes the taxgatherer's claim, when a parent wishes to have an indulgent view taken of his son's performances in an examination, or when a litigant thinks that a word of recommendation might help him in a court of justice.

The voter writes to the deputy and the deputy approaches the minister. When a grant of money or a decoration or a salaried post is in question, the minister is made to understand that the deputy's support at the next crucial vote in the Chamber may be affected by the degree of benevolence that the government displays. Thus there is a continuous process of triangular huckstering between the voters, the deputy and the ministers. The voters back home are insistent, the ministers may demur, and the deputy does most of the worrying. His job is vexatious, none too dignified, and ill paid—

which may be the chief reason why France does not get better deputies.<sup>1</sup>

The oratory of the pen counts for more in France than in England or the United States. Candidates for the Chamber make speeches of course but in reaching the public they place greater dependence upon the newspapers. Nearly all French newspapers are aggressively partisan and personal. They profess none of the party independence that marks some of the great daily journals in America. The French newspaper is a personality not an institution. It is the organ of its editor and the French editor never hides his light under a bushel. His editorials are flaming appeals and he prints them on the front page with his name signed to them. So when an editor or one of his close friends happens to be a candidate the newspaper will devote its whole energies to the task of electing him. The news of the day will go off the front page if necessary. In such cases the editor gives the public what he thinks the public ought to want, and the public takes what it gets.

There are real debates in the Chamber of Deputies with set speeches eloquently delivered. These speeches are not usually long—they rarely exceed a half hour—but they are earnest, often impassioned and sometimes brilliant. The deputies interrupt with applause or with taunts and cries of all kinds while the presiding officer brings beads of perspiration on his face by vigorously ringing his bell for order. If that does not serve to quell the tumult he exercises his *droit de chapeau* or right to put on his hat in preparation for leaving the Chamber. As a last resort he may adjourn the sitting and leave. To the onlooker from the galleries the debates in the French Chamber seem uproarious at times but there is not much personal rancor behind the oratorical barrages. Deputies may shake fists at a safe distance on the floor or even throw out challenges to a duel—but an hour later they may be seen fraternizing in the corridors.<sup>2</sup>

The powers of the Chamber do not require much explanation. Its affirmative action is essential to the enactment of all law that soever. All financial measures must originate in this branch of the

See Lord Bryce *Modern Democracies* V 11 p 28

See the excerpt from this article in *The Best Show in Paris* which has appeared in *Manhattan L. Hill and Harold W. Stark Background of European Civilization* (New York, 1933) pp 299-301

French parliament, and although the Senate is not constitutionally  
 THE debarred from amending or rejecting such measures  
 CHAMBER it has refrained from serious interference except on  
 POINCARÉ a few notable occasions such as its rejection of  
 the Blum ministry's plan for a temporary financial dictatorship in  
 1938. Passing the budget is the Chamber's big task each year  
 and in this field its decisions are virtually final. Changes, after the  
 budget has gone to the Senate, are relatively infrequent. As for non-  
 financial measures, most of them also originate in the Chamber of  
 Deputies, but the Senate feels free to amend, delay or reject these  
 bills at its discretion. As has been pointed out, the Senate's usual  
 course (when it does not like a bill) is to refer the measure to a com-  
 mittee for suffocation. But if the Chamber shows a live and sus-  
 tained interest in the measure it will stir up the ministers and the  
 ministers may then prod the Senate into concurrence. The process  
 of lawmaking, however, is reserved for the next chapter.

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Besides the books listed at the close of the three preceding chapters,  
 mention may be made of Eugène Pierre, *Traité de droit politique, législatif  
 et parlementaire* (5th edition, Paris, 1919) Charles Benoist, *Le rôle de la politique  
 française* (Paris, 1928) M. Aragon, *Guide pratique des élections législatives*  
 (Paris, 1928) Henri Leyret, *Le gouvernement et le parlement* (Paris, 1919)  
 Henri Maret, *Le parlement* (Paris, 1920) Pierre Dominique, *Manuel du  
 parlement* (Paris, 1928) and the various illuminating articles which appear  
 from time to time in the *Revue politique et parlementaire*.

## CHAPTER XXVII

### THE PROCESS OF LAWMAKING

He that makes the law knows better than anyone else how it should be executed and interpreted. It would seem, then, that there could be no better constitution than one in which the executive power is united with the legislative.—*Jean-Jacques Rousseau*.

When the legislative and executive powers are united in the same person, or in the same body of magistrates there can be no liberty.—*Montesquieu*.

Legislative bodies have a threefold purpose: they make the laws, they authorize the expenditures and they control administrative policy. By legislating they provide a system of rules governing the conduct of the people; by adopting a budget they furnish the funds with which government can be carried on; and by means of inquiries, interpellations, and investigations they exercise a continuous supervision over the administrative authorities.

THAT THE  
LEGISLATIVE  
PROCESS  
INVOLVES

This represents a vast amount of work, and no legislature would ever manage to get it done without rules of procedure. These rules are not designed merely to expedite the passage of laws. Were that the case there would be no need for so many of them. They aim also to ensure economy in public expenditures, to safeguard the rights of minorities in the legislative chamber and to provide channels through which the ministers or other executive officials may be controlled. What we customarily call the process of law-making, therefore, is in reality a good deal more than that. It is a process of legislation, appropriation and supervision combined.

Both branches of the French parliament elect their presiding officers and determine their own rules of procedure. The presiding officer is chosen, in each chamber, by secret ballot. Two or more vice presidents are chosen at the same time, also several secretaries and some additional functionaries. Together these officials serve as a bureau or administrative committee.

PARLIAMEN-  
TARY  
OFFICIALS.

The position of the president in both chambers differs from that



of the speaker in the British House of Commons but is not very unlike that of the speaker at Washington. He is a party man the choice of whatever combination of parties happens to control a majority among the members. Upon his election to the chair he does not cease to be a partisan as is the case with the speaker in the British House of Commons. By usage he is permitted to favor (if he does not do it too obtrusively) the bloc which elected him. In recent years it has become unusual for the president to leave his chair and take part in the debates but it has not always been so. The fiery Gambetta when he presided in the Chamber fifty years ago used to recognize himself descend from his chair to the tribune and pour forth oratory by the hour. By custom the president refrains from voting even in case of a tie. If the vote is a tie the proposition is declared to be defeated.

In general the powers of the presiding officers in the two French chambers are the same as in other legislatures. They recognize members who desire to speak put questions to a vote announce the results decide points of order and sign the records of proceedings. But they do not appoint committees. There is no important difference between the functions of the presiding officer in the Senate and in the Chamber of Deputies. But the president of the Chamber finds much greater scope for the exercise of his disciplinary powers inasmuch as the task of maintaining order is much more difficult in the lower branch.

#### LEGISLATIVE COMMITTEES

Both chambers of the French parliament make use of committees or commissions as they are more commonly called. In addition to special or sessional committees appointed for specific purposes the Chamber of Deputies maintains twenty regular committees (grand standing committees) each having forty-four members. These committees are reconstituted at the beginning of each year. Each committee is made up by assigning a proportionate representation to the various party groups in the Chamber as a whole. The procedure is as follows: first the numerical strength of each party group in the Chamber is figured and officially announced.<sup>1</sup> Then each group is notified

In case of doubt the duly designated group is asked to declare the group to which it belongs. If it disclaims all glance to any group it is dealt with as an inscript and these also are given the proportionate share of representation.

that it is entitled to its due proportion of members on each of the twenty committees and is asked to nominate them. Thereupon it holds a caucus and selects from its own ranks a sufficient number of members as requested. This is usually accompanied by preliminary conferences and agreements but if there is any rivalry that cannot be settled in this way the group decides the matter by secret ballot.

When each group has named its representatives on all the committees the complete lists are made up and published. If at the end of three days no protest signed by at least fifty deputies has been lodged with the Chamber the committees are deemed to have been chosen but if a protest is filed in proper form the whole Chamber takes up the matter and settles it by vote if necessary. In the Senate the procedure is much the same but there are only twelve regular committees to be appointed there are fewer party groups to be represented the committees are smaller and any twenty senators may file a protest against the acceptance of the group nominations.

Each of these regular committees has its own field of work. One deals with finance another with foreign affairs another with measures relating to the army another with public works another with commerce and industry. There are regular committees on the navy agriculture labor aviation public health social insurance local government and so on. Every legislative proposal is referred to the appropriate committee and makes no further progress in the Chamber until a report from the committee is forthcoming. If there is no regular committee to which it can properly be referred a special committee is appointed to consider it. The committees usually hold their sittings in the forenoon and on Wednesdays, when no meetings of the chambers regularly take place. But they also meet in the afternoon on other days if there is urgent work to be done. There are no public hearings as in Great Britain and America the sessions of French parliamentary committees are always executive sessions although the author of the bill which is under consideration is permitted to be present.<sup>2</sup>

This is one of the noteworthy features of French parliamentary

A full discussion of this subject by the author in all its phases may be found in R. K. Gooch, *The French Parliamentary System* (New York, 1935).  
 E. and P. states that no member of the committee has the right to attend less than Chamber by special resolution authorizes their attendance.

ULIATION  
O TIE LISTS  
AND PROTESTS

W TH  
CO M TTE  
DO T R  
WORK

usage yet it hardly seems consistent with the commonly recognized usages of democratic government. Nor does it make for efficient committee work because experience has everywhere shown that there is no easier way of getting information than by means of public hearings. On the other hand some members of the committees always confer informally with the leading supporters and opponents of any important measure which they are considering. This ensures both sides a chance to reach the ears of the committee in a roundabout way before a report is made. Each committee is required to keep a detailed record of its proceedings and this record is deposited in the archives of the Chamber where any deputy may inspect it. Before making its report on any measure of importance the committee also ascertains the attitude of the ministers in relation to it.

The French process of lawmaking superficially resembles the English in one important feature namely in the distinction which is made between government measures (*projets de loi*)

and private members' bills (*propositions de loi*). Government measures are submitted to parliament by a member of the ministry. Immediately upon introduction they are referred without reading or debate

to the appropriate standing committee. But bills relating to public as well as to private matters may also be introduced by any senator or deputy. All such bills are also referred without debate to a standing committee in the same way as government measures. In the British House of Commons a private member's bill has relatively little chance of passing unless the ministry supports it or at any rate assumes an attitude of benevolent neutrality towards it. But in France this is not the case. Individual deputies and groups of deputies bring in resolutions formally requesting the ministers to father some *projet* and they also come forward with their own proposals by the hundred at every session. Whether

a private member's bill gets consideration is not determined in France as in England by drawing lots for places on the calendar. In the Chamber of

Deputies the order of business is determined each week by a meeting known as the *conference des presidents*. This gathering is attended by the president and vice presidents of the Chamber, the chairmen of all standing committees and the leaders of the various party groups. Together these key men decide what measures shall have the right

of way. Naturally they keep in mind the wishes of the ministry but they see to it that private members get a square deal also. It should be mentioned that while bills may be introduced in either branch of the French parliament most of them originate in the Chamber of Deputies.

When a committee decides to report a bill it does not entrust this duty to its chairman. It appoints one of its own members to serve as a *rapporteur* for the measure and it is his function to explain it on the floor of the legislative chamber. This it does even in the case of government measures—

HOW BILLS  
ARE  
REPORTED

a practice which contrasts sharply with that of the House of Commons. In England a government measure is always presented explained and defended on the floor by a member of the ministry. In the American House of Representatives bills are ordinarily reported to the House by the chairman of the committee which has considered them. But in France the reporters appointed by the committees to steer government measures through parliament are neither ministers nor chairmen; they are private members. The ministers and chairmen may join in the debate and usually do but they do not direct it. For the moment the minister who has framed the bill and who presumably knows most about it is eclipsed by a private member.

Here is a division of functions and responsibility which has not been altogether beneficial in its effects. There is much to be said for the English plan of having each minister pilot his own bill through the House. There is also a good deal to be said for the American plan of having the chairman of the committee do the steering. In both cases the responsibility is fixed and unified. The French method divides the leadership. It consequently divides the responsibility and this diffusion would be fatal were it not for the fact that the reporters and the ministers usually work in close cooperation. There is thus to be said also that since a *rapporteur* has usually only one important bill per session he can focus his best efforts on it and become thoroughly conversant with all its implications. Incidentally the successful steering of an important bill may give the *rapporteur* great prestige and virtually ensure his early entrance into a ministry.

DEFECTS OF  
THE SYSTEM

When a committee is ready to report a measure the text along with the reporter's *exposé* is printed and distributed. On the day appointed for debating it the reporter mounts the tribune and

explains his committee's recommendation. Speeches dealing with the general principles of the bill may then follow. But questions relating to details and phraseology are passed over. No amendments are in order at this stage. When the debate on the general features of the bill has been finished a vote is taken on the question of proceeding to consider the details (passing to the articles it is called). If the Chamber votes *No* on this question the measure is defeated. But if it votes *Yes* the bill is then taken up section by section as in the House of Commons. During this stage amendments may be proposed by any member. In order to be recognized by the chair however a member must put his name on the presiding officer's roster and take his turn.<sup>1</sup> Sometimes when important measures are under consideration this roster contains scores of names and the debate runs on day after day.

### THE DEBATES

In the House of Commons it is an unwritten rule that no one except a member may speak from the floor. Even ministers may not speak there unless they are members of the House. Congress is also averse to hearing the voices of any but its own members although the President of the United States is given the privilege of reading a message to it at any time. Members of the American cabinet never speak in either House. If they attend they sit in the gallery. But in the Chamber of Deputies non members go to the tribune and take a hand in debates—ministers whose seats are in the Senate undersecretaries bureau chiefs and even various experts who may be designated by the minister to explain the technical phases of a measure. These functionaries may be called in to elucidate defend or suggest changes. They are especially in evidence during the debates on the budget. Expert officials from the various branches of the administrative service come in and are sent to the tribune to explain what the figures mean. This plan is not without its advantages for it means that the talk is by men who are close to the figures and know what they are talking about—which cannot always be said of the budget debates in other legislative bodies.

<sup>1</sup> This does not apply to the minister who is the porter who in charge of the bill both of whom are entitled to speak whenever they ask for it.

Debates on the details of measures might be indefinitely prolonged in the French Chamber were it not for two considerations which operate to keep discussion within bounds. One is the fact that most of the bills are short and simple they do not contain page after page of detailed provisions as is the case with so many legislative bills in Great Britain and America. In France the details are generally left to be worked out by the council of state and promulgated in an executive decree. This saves the time of parliament ensures a more careful consideration of details and gives flexibility to the laws.

METHODS OF  
LIMITING  
DEBATE

1. OF  
DISCUSSION OF  
DETAILS.

In the second place the rules permit the Chamber to put an end to debate on any clause or section of a bill by applying the cloture. This can be done by majority vote at any time provided at least two members have spoken on the question, one on each side. A motion to apply the cloture can not be debated in the ordinary way but before the motion is put an opportunity is always given for one deputy to speak against it. The cloture if carried does not debar a member of the ministry from continuing the discussion and ministers frequently take advantage of this privilege. As a matter of fact this method of limiting debate is rarely used in the French Chamber very much less frequently than in the House of Commons.

2. THE  
CLOTURE

There are other ways of keeping the debate within bounds. Until quite recently there was a schedule of time limits. Ministers were permitted to speak as long as they desired, *rapporteurs* were limited to one hour, while individual deputies proposing amendments were given a half hour and ordinary participants in the debate had the bell rung on them in fifteen minutes. This rather mechanical arrangement has now been superseded by a new and more flexible one. The leaders now arrange and agree upon the order of speakers and the time limits before the debate begins.

OTHER LIMITATIONS  
OF DEBATE

In Great Britain and in the United States all bills are given three readings. In France there are only two readings—one at the time of the bill's introduction and the other at the close of the debate on the articles. Votes are taken by a show of hands or by calling on the *Oui* and the *Nous* to rise in succession. If there is any doubt as to the accuracy of the count it is not customary to demand a roll call. Instead of

METHODS OF  
VOTING  
IN THE CHAMBER.

calling the roll a balloting urn is passed from seat to seat and each deputy drops his ballot into it. There is no secrecy in this balloting each deputy can see how his neighbors vote.<sup>1</sup> If a deputy is absent he may ask some fellow member to put in a ballot for him. France is one of the few countries which permits its legislators to vote by proxy.<sup>2</sup> Finally if the result of this ballot does not satisfy the Chamber fifty members may demand a ballot at the tribune. In this case the names of the deputies are called in alphabetical order. As each name is called the deputy walks to the tribune and hands his white or blue ballot to one of the secretaries. No proxy voting is allowed in this case hence the balloting at the tribune sometimes gives a different result from the balloting in the urn.

When a measure has safely passed the Chamber it goes to the Senate where there is much the same procedure. The rules of the Senate are slightly simpler and there are likely to be fewer amendments from the floor. Having passed the Senate the bill is laid before the President of the Republic—not for his signature but for promulgation. The president's approval is not essential to the validity of a law but the constitution authorizes him to delay promulgation meanwhile asking the chambers to reconsider their action. This power to delay promulgation is of no practical importance however because the president never exercises it.

In order to be duly enacted a bill must be passed by both the Senate and the Chamber of Deputies in exactly the same form.

Any amendment made by one chamber will serve to defeat a measure unless it is agreed to by the other. Bills are frequently hung up by a failure to procure agreement on some particular provision sometimes a minor provision. When this happens with respect

WHAT HAPPEN WHEN THE TWO HOUSES DISAGREE?

<sup>1</sup>The ballots are in the form of small slip of paper which are deposited by the bureau of the Chamber at the beginning of each session. Every deputy is given a package of these slips which he uses as he wishes and may be called upon to have his name printed on them. He keeps these slips in the little wooden desk which is attached to the back of the seat immediately in front of his own. When balloting takes place he uses a white slip to vote Yes or a blue slip to vote No.

The privilege of voting by proxy has been considerably abused. A deputy who is detained by political or social duties asks some friendly member to cast a ballot for him by way of being in the safe. He asks even if he has not done so. Half a dozen of his ballots may be thrown into the urn. Ballots are often cast for members without their permission and for members who represent not E. M. Sait *The Congress and Politics in France* (New York 1920) p. 220

to government measures the usual practice is for the ministers to intervene and break the deadlock if they can. They may suggest a compromise and urge it from the tribune in both chambers. Thus they are able to do in a direct and effective way because they have the right to speak in both. Or if the issue is one of real importance the ministers can demand that one of the chambers recede and may threaten to resign if it does not. In the case of private members bills the ministers do not intervene but compromises are sometimes arranged by a joint committee of conference after the American fashion.

#### BUDGETARY PROCEDURE

In France as in other countries the most important business of the legislative body is the levying of taxes and the making of appropriations. France has had a national budget system for many years and in its main features this system is like that of Great Britain. The work of framing the budget is begun each summer by the minister of finances who requests the other ministers to prepare their estimates for the next fiscal year. When these estimates have been obtained they are consolidated into one huge document and placed before the ministry for revision. Accompanying the estimates is a statement prepared by the same minister showing the anticipated revenues. The ministry revises and adjusts the figures as may seem advisable its aim being to bring the ordinary expenditures within the limit set by the estimated national income.

In France the budget makes a distinction between ordinary and extraordinary expenditures. The former include or are supposed to include all the current expenses of government. The latter comprise expenditures which are not of a current nature such as the cost of carrying on a war or restoring devastated territory or providing some great public improvement. Extraordinary expenditures are not paid out of current revenue but by borrowing money. The distinction is sound in principle but in practice has left much to be desired. There is a strong temptation to secure a balance between current revenue and current expenditure by transferring to the extraordinary list things which do not really belong there. The French ministries did this on a considerable scale after the war. Billions of francs were



borrowed for extraordinary expenses on the assumption that the money would be repaid out of German reparations which ultimately were not forthcoming

When the ministry has finished with the estimates of receipts and expenditures they are presented in a voluminous *projet* to the Chamber of Deputies <sup>1</sup> This is done by the minister of finance who may use the opportunity to give the Chamber a general review of the government's fiscal affairs But there is no regular budget speech as in the House of Commons The Chamber after hearing the minister's general survey refers the whole matter without debate to its committee on finance which is the most important of all its standing committees This committee forthwith pitches into work on the ponderous *dossier* and may spend months at its task Public hearings are not held as in Congress but the budget committee consults freely with the financial officers of all the ministerial departments Formerly a good deal of the work was delegated to subcommittees but in recent years this practice has been largely abandoned

On the whole however the committee on finance works in co-operation with the ministers and rarely assumes a hostile attitude It is free to insert strike out reduce or increase any item—and it does make a good many changes but the practice is to make no substantial alterations particularly by way of increase unless the committee is assured that the ministry will approve On some occasions however there have been considerable modifications and it is said that the ministers have learned to pad their estimates in order to be prepared for reductions at the hands of the committee on finance

When the committee has concluded its work the revised budget is laid before the whole Chamber where it is dealt with like any other government measure There is a debate on its general principles followed by a consideration of the articles or items The *rapporteur* of the budget committee not the minister of finance is in charge of the measure the minister is merely his adjutant This is in sharp contrast with the English practice of having the chancellor of the exchequer guide the budget through the House of Commons Nor does it closely resemble the procedure in Congress where the chairman

In printed form the budget is a document of several hundred pages and contains forty to fifty thousand items all grouped by administrative principles

of the committee on appropriations brings the budget before the House and assumes the task of getting it through. Like this chairman however, the reporter of the budget committee in the French Chamber is invariably a skilled and experienced parliamentarian. He sits on the front bench during the budget debates with the members of his committee alongside him. As groups of items are taken up in succession he sees to it that questions are answered and objections met. The minister of finance also takes a prominent part in the debate and is usually the most frequent participant in it, but the reporter is the man who does the steering. It is his nod that sends speakers to the tribune.<sup>1</sup>

There is one other feature in which the French budget procedure differs from English and it is of much significance. Mention has been made of a famous rule in the House of Commons which provides that no proposal of expenditure can be considered unless it emanates from the crown—that is from the cabinet. In the Chamber of Deputies there is no such provision either by rule or by usage. The Chamber can insert new items in the budget or increase the size of items already there.<sup>2</sup> And this freedom it often utilizes even in the direction of revising the budget upwards. It is true of course that the Chamber cannot take this action against the resistance of the ministers unless it is ready to force the ministry's resignation, but it is equally true that the ministers, being practical politicians, do not force the issue to that alternative if they can avoid it.

In matters of this kind the traditions of a lawmaking body count for more than its formal rules. And the traditions of the Chamber of Deputies are steadily hardening along lines similar to those of the House of Commons. The deputies realize that a minister of finance cannot make a balanced budget if the Chamber insists upon changing items at will. A national budget is at best a complicated affair.

The work has now become too heavy for a single *porteur* so it is usually divided among several of them—each having responsibility for portions of the budget.

Since 1910 however the Chamber has had a rule that a private member may propose during the debate on the *budget des finances* any amendment involving the establishment of a new public office, the increase of any existing salary, pension, or may any private member offer a resolution asking the ministry to propose a change.

THERE IS NO  
RULE IN  
FRANCE THAT  
PROPOSALS OF  
EXPENDITURE  
CAN ONLY BE  
MADE BY A  
MINISTER.

IT IS GO-  
ING TO BE  
TENDED  
TO SECURE  
THE SAME  
RESULTS.

with all its parts adjusted and interlocked. If you change one item there are equally good reasons for changing others and presently the whole budget is torn wide open. As a practical matter accordingly there is a strong incentive to let the items stand as they are. As an additional safeguard the rules provide that no riders can be attached to the French budget on its way through parliament.<sup>1</sup>

In addition to proposing changes in the budget when it is under consideration any member of the Chamber may introduce an independent proposition which involves the expenditure of money. Such proposals go to one of the standing committees and if favorably considered they are then referred to the committee on the budget from which a

few of them may come back to the whole Chamber for discussion. The committee on finance has adopted the practice of refusing to report any private member's proposal to spend money unless the minister of finance gives his approval.<sup>2</sup> This practice has strengthened the ministry's control over appropriations. The ministry's hand would be even stronger if appropriations could be made

for a longer term than a single year. But this is not permitted. The principle of *annualité* on which French statesmen lay great emphasis requires that all revenues and all expenditures shall be authorized for one year only. This requirement is not expressed in the constitutional laws of 1875 but rests on an unwritten law which has been scrupulously observed since the days of the Great Revolution.

When the budget in the form of a *loi de finance* has passed the Chamber it goes to the Senate and is at once referred to the finance committee in that body. But this committee does not keep it long or study it very carefully. Very promptly it comes back and is debated by the Senate as a whole. Under certain limitations any senator may propose amendments. Now and then important changes are made by the Senate and the

A 'rider' is a clause or provision usually inserted into the measure itself which is tacked to an appropriation bill on its way through the legislature. For example the Congress of the United States in 1919 tacked to the agricultural appropriation bill a rider which sought to abolish daylight saving. President Wilson vetoed the measure because of this rider.

In 1934 moreover the Chamber adopted a rule that no legislative proposal which is directly and exclusively dealing with public expenditures of diminishing treasury may be introduced unless it comes within the content of the government budget bill. For other government bills the rising of a peeling proposition is

bill is returned to the Chamber where the amendments may be accepted, or as more often happens, they are rejected. In the latter case the minister of finance endeavors to effect a compromise and in this he is aided, if need be by a joint committee of conference. Eventually an agreement is reached and the budget goes to the Elysee for promulgation by the President of the Republic.

From the foregoing outline of budget procedure it will be seen that although the control of national finances exercised by the Chamber of Deputies is not so complete as that of the House of Commons, there is a considerable resemblance between the two. In both countries the ministers have the initiative but in both of them the lower chamber controls the ministers. Every year in both countries, a full account of all money spent during the preceding year must be laid before the representatives of the people. While it is true that the French Senate may amend the budget, while the House of Lords may not, this difference is not of great practical significance because the French Senate usually recedes when the Chamber insists. Not so the Senate of the United States. It amends money bills with a free hand and when the House of Representatives declines to concur the issue goes to a conference committee where the Senate often wins. One might sum up the matter in this way. The House of Commons has complete control of national finances both in law and in fact, the Chamber of Deputies has it in fact but not in law, while the House of Representatives has it in neither.

The Chamber's control of the French ministry is a corollary from its power over the purse for there is nothing that a ministry can do without funds. Governments must have nourishment in order to live. But the French Chamber has other ways of holding the minister to account. Its members have the privilege of questioning the ministers on the floor. Any deputy can ask questions either orally or in writing. The minister to whom questions are addressed must answer them unless there are reasons of state which make it advisable to refuse. Refusals to answer questions relating to diplomacy are sometimes based on this ground. When a minister answers a deputy's question it is permissible for the latter to reply but no further debate is permitted. The president of the Chamber merely declares the incident closed. Many questions are asked at every session, some of them relating to the most trivial details of administration.

THE  
CHAMBER  
CONTROL OF  
FINA. CZ.

QUESTIONS  
ADDRESSED  
TO THE  
MINISTERS.

## THE INTERPELLATION PROCEDURE

A much more energetic means of enforcing the continuous responsibility of ministers to the Chamber is provided by the formal questioning procedure known as the interpellation. This is a feature of great importance in France because it often settles the fate of ministries and in fact affords the usual way of determining whether a minister possesses the confidence of the Chamber. In England a ministry rarely goes out of office except when the people pronounce against it at a general election. In France it is usually given its *coup de grace* by an adverse vote on an interpellation in the Chamber. An interpellation is a formal question framed by some member of the Chamber and addressed to a minister. It differs from the ordinary question in that it must always be in writing. It paves the way for a general debate in which everyone has the right to take part, and the debate on an interpellation can only be closed by a vote.

An interpellation may be framed by any member of the Chamber and may relate to any question of public policy except that no interpellation may be raised on matters which come up in connection with the annual budget. Couched in the form of a question the interpellation is presented to the presiding officer of the Chamber who reads it aloud and then transmits it to the minister concerned or if it raises a question of general policy to the prime minister.<sup>1</sup> If the interpellation is one which would involve a discussion incompatible with the national interest they may refuse to accept it. Such refusals however are not frequent. Ordinarily the challenge is accepted. Hereupon a time is fixed for the minister's reply and for the debate thereon. The debate may be brief or prolonged according to the amount of interest which the Chamber displays in the matter. But in any case it must be concluded by a vote. There is no other way by which the Chamber can get back to its regular order of business.

The motion to close an interpellation debate is made in some such form as this: The Chamber having heard the explanation of the minister passes to the order of the day. or The Chamber having heard the declaration of the minister and being convinced that the grievances voiced dur-

UTTING THE  
ORDER DU  
JOUR

Illustrative examples are printed in Norman L. Hill and Harold W. St. L. Backlund, *French Government* (New York, 1935) pp. 307-311.

ing the course of the debate will be duly set right by the government, returns to the order of the day. Several motions in fact, may be offered in which case the simple motion to resume business accompanied by no qualifying clause is always voted on first. Sometimes a ministry rests content with this simple motion but as a rule it insists on an expression of confidence—an *ordre du jour motivé* it is called.

Now the significance of this procedure arises from the fact that the ministers must resign unless they can obtain a favorable vote in the Chamber on the question of resuming routine business. Most interpellations do not embody a mere quest for information. When it is information that a deputy wants he can get it more quickly and more easily by asking an ordinary question. The purpose of the interpellation is twofold. First, to draw the attention of the whole Chamber (and incidentally of the newspapers) to some particular phase of ministerial policy which is believed to be open to criticism and second to precipitate a vote which the framers of the interpellation hope will be adverse to the ministry thus forcing its resignation. The procedure enables the opponents of a ministry to hold it to a strict accountability.

Every ministry is from time to time put upon its mettle in this way must prepare to face a series of interpellations during the course of every session. Of course it will succeed in answering most of them to the satisfaction of a majority in the Chamber but sooner or later and perhaps quite unexpectedly the ministers find themselves overthrown when the vote is taken. Of the 91 ministries that have served France since the foundation of the Third Republic the great majority have come to grief in this way. Hostile deputies lie awake nights thinking up ingenious interpellations which are bound to cause embarrassment no matter how the ministers try to answer them.

The interpellation has been a feature of French parliamentary procedure for a long time and it would now be difficult to abolish it. But most students of comparative government, and some French publicists as well look upon the interpellation as an institution of dubious merit. In its actual operation it does not tend to stabilize the course of ministerial policy but to wreck the craft. Interpellations are not essential to the maintenance of ministerial responsibility for England has had no difficulty in getting along

SIGNIFICANCE  
OF THE INTER-  
PELLATION

KEEPS THE MIN-  
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URES  
THE FRENCH  
INTERPELLA-  
TION  
CONCERN

without any such procedure and so have the British self governing dominions. On the other hand the interpellation procedure in France has frequently resulted in the ousting of a ministry on some trivial issue where the general policy of the government was in no way involved.

It is sometimes argued and with a good deal of cogency that the instability of French ministries is not mainly due to the interpellation

THE INTERPELLATION IS NOT THE ONLY REASON FOR MINISTE RIAL INSTABILITY IN FRANCE.

procedure but results from the multiplicity of the party groups in parliament. French cabinets are practically always coalitions depending for their support on groups of deputies among whom there is no genuine cohesion. Any test of strength no matter how applied would disclose their weakness as compared with

English ministries. In the British House of Commons an opposition member can at any time move the adjournment of a debate in order to discuss some alleged grievance. When the budget is under discussion he can move to reduce the salary of a minister. And if either of these motions should be adopted it would have exactly the same effect as an adverse vote upon an interpellation in France. Such motions are made from time to time in the House of Commons but they are voted down. This is because the British ministry can count upon the votes when it needs them. In France the ministers have no such unified dependable support. So it is not the interpellation procedure alone but the decentralization of political parties that is chiefly responsible for shortening the average life of ministries in France.

Among the thousands of Americans who go to Paris few ever think of taking a look at the Chamber of Deputies in session. This is true even of Americans who are actively interested in

THE CHAMBER IN ACTION

politics at home. Yet the Chamber is worth a visit and admission to the galleries can be had for the asking.

There is a fair chance of arriving in the midst of an exciting debate and in any event the sittings of this body seldom bear much resemblance to a prayer meeting. The visitor will be surprised to see the deputies addressing themselves to the audience and not to the chair as is the practice in other countries. If he understands the language he will be exhilarated by the swift and often brilliant exchanges that pass between the tribune and the floor. And if perchance his visit happens to occur when the Chamber is deciding the outcome of an interpellation he will see a sight that is not soon forgotten. The excitement the clamor the gesticulations the crowded galleries the

thronged corridors and all the rest of it—they constitute a spectacle that only Frenchmen can provide. Outside the Palais the book makers and gamblers are laying wagers on the outcome as though the whole proceeding were a horse race or a cock fight. Surveying it all the visitor may wonder how a great nation manages to get its laws made in this way. The answer is that it doesn't. France does not depend upon her senators and deputies for the framing of statutes.

The laws of the French Republic are really framed by administrative experts under the direction of the ministers; they are revised and touched up by standing committees; the details are filled in by the council of state and promulgated by presidential decree. Both the Chamber and the Senate are lawmaking bodies in a generic sense only. Their prime function is deliberative—to reflect the desires and opinions of the people—in other words to keep the executive and administrative branches of the government responsive and responsible. Together they form the grand inquest of the Republic with the function of criticizing the powers that be and displacing them whenever the occasion arises as it frequently does.

THE LAW  
MAKING  
PROCESS  
SUMMARY

**GENERAL PROCEDURE.** The *Règlement de la Chambre des Députés* and the *Règlement du Sénat* that the printed manual of rules for the two chambers are indispensable aids in the study of their procedure. The standard French treatise on parliamentary law and methods is Eugén Perrin *Traité de droit parlementaire* (10th edition 2 vols. Paris 1929) but mention may also be made of the *Précis de la loi et de la procédure* published in Paris in 1917 and of J. Onimus *Questions et Interprétations* (Paris 1906). Interesting comments on French parliamentary methods may be found in Sisley Huddleston *France and the French* (2 vols. New York, 1925) W. L. Middleton *The French Political System* (New York, 1933) Laurence Jerrold *The French Today* (London 1916) and E. Seefried *France As She Is* (London 1930) and Alexander Werth, *France Before the Revolution* (New York, 1934).

**LEGISLATIVE COMMITTEES.** The best and most comprehensive study is R. H. Gooch, *The French Parliamentary Committee System* (New York 1935) but mention should also be called to Joseph Barthélemy *Études sur le parlementarisme* (Paris 1934) and André J. L. Bion-Lévy *Le régime des formes de la procédure parlementaire* (Paris 1922).

**BUDGETARY PROCEDURE.** French budgetary procedure is fully explained in René Siourm, *Le Budget* (Paris 1913) which has been translated into English by Theodore Plazanski (New York, 1917) A. E. Buck, *The Budget*



in *Governments Today* (New York 1934) gives a more general description of the procedure. Mention may also be made of E. Allix, *Traité élémentaire de science des finances et de législation financière française* (6th edition Paris 1931) Harvey Fish, *French Public Finance* (New York 1922) and R. M. Haig, *The Public Finances of Post War France* (New York 1929).

See also the references at the close of Chapters XXV and XXVI.

## CHAPTER XXVIII

### FRENCH POLITICAL PARTIES AND POLITICS

To keep united the only way is to stay disunited — *Jules Ferry*

The first thing that the American student of French politics ought to do (if he can) is to banish all home grown political notions from his mind. He should approach his study of the French party system as though he were a man from Mars without any ideas as to why political parties exist.

A WORD OF  
CAUTION

what they do and how they do it. For the American and French party systems have nothing in common except a mutual desire to get control of the government. They are unlike in their organization, aims and procedure. To make the confusion worse the French use a political terminology which is quite like that with which we are familiar in America but which usually means something different.

In the United States a political party is a nation wide or state wide organization with a large and fairly stable membership. Each party has its own group of representatives in Congress or in the state legislature. Party organizations in the country and party groups in the legislative body are definitely related. But in France this is not the case. Party organizations in the country and party groups in parliament have in many cases no close relation at all. Members of a single party group in the Chamber of Deputies may come from more than one of the party organizations; the names of the groups in the Senate are not the same as those of party groups in the Chamber and there are some important party organizations in the country which have no representation in parliament at all.

Both the party groups in parliament and the party organizations outside are in constant flux; the former being the more volatile. Some of the nation wide parties are relatively stable (the Radical Socialists and the Communists for example) but in some cases they have national and regional organizations quite distinct from the parliamentary groups bearing the same name. In a word one should distinguish at the outset between French political parties and party

*groupements* in the French parliament. The latter are for the most part artificial they are continually in process of being broken up and re formed

In 1937 according to the *Political Handbook of the World* for that year there were thirteen party-group in the Chamber of Deputies.

THE MULTI- They had memberships ranging from five to one hundred and forty seven. In addition there were twenty PARTY GROUPS, AND THE REASONS OR IT nine deputies who set themselves down as non inscripts that is, belonging to no party group at all. Foreign students of French politics have tried to account for the disintegration of both the regular parties and the parliamentary groups in France but the reasons are neither few nor simple. In brief however the multiplicity seems to be caused by *first* the lack of continuity in French constitutional organization since political parties came into existence, *second* the negative individualism of the French political temperament, *third* certain features in the system of parliamentary procedure, and *fourth* the periodical injection into French politics of personal issues not involving fundamental questions of public policy which have tended to split the party groups into fragments and produce new alignments.

To begin with it should be reiterated that in a political sense modern France is very modern. Government by political parties did not exist in France before the Revolution of 1789 nor did it make much real headway for almost a century after that date. During most of the nineteenth century the fundamental issue in French politics concerned the very nature of the state whether it should be monarchical, republican, imperial or something else. No matter what the form of government during these years there were large numbers of irreconcilables who wanted a republic when a monarch or emperor was on the throne or who clamored for a monarchy during the brief republican interludes. Political parties as Englishmen and Americans understand them, cannot exist and develop unless there is something approaching a consensus on the general nature of the commonwealth. And it is only during the past fifty years that the French, as a nation have reconciled themselves to the republic as a permanent institution. Even yet, in fact, there is still a small group of extremists who would like to see a monarchical or even a dictatorial form of government restored in France reactionaries who have not

1 THE LACK  
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CO TINUITY

yet reconciled themselves to the results of the Great Revolution<sup>1</sup>

To grow strong and stabilized it is necessary for a political party to accept the existing regime. If its aim is to wreck the state and not merely to change the government, it cannot become a party of loyal opposition as each of the great parties is forced to do from time to time in England and America. The various party groups in France have accepted the Third Republic, as a permanent institution, since 1887 or thereabouts. The interval since that date has been too short for the development of deep-rooted political traditions.

In the second place the *morcellement* of political parties and parliamentary groups in the Third Republic is probably due in part to certain traits in the general temperament of the French people. National temperament, of course is a compendious term that can be utilized to explain or excuse almost any eccentricity in government. Yet the individualism of the people is a well recognized trait of the French national character. And the individualism of the Gallic race is negative in comparison with the constructive individualism of the Anglo-Saxon. The reasons for this difference make a long story too long to be narrated even in outline here. But it is a truism that the average Frenchman despite his emotional exuberance on election day is not really interested in politics and does not readily lend himself to party organization or discipline. This is particularly true of the small farmers who make up half the total population. The French peasant will work himself into paroxysms over some real or imaginary private grievance (such as a trespass on his little farm) while the townsman will induce apoplexy by the fervor of his interest in the question whether some side street shall be named Rue Clemenceau or Place Poincaré. But great controversies on matters of public policy often leave them unperturbed. It takes something more than a commotion in the Folies-Bourbon (as he nicknames the Chamber) to ruffle the serene disregard of the average *bourgeois* for happenings outside his own community. Principles and ideals he will discuss with vehemence but their application to the problems of everyday politics—that is a matter which the French voter regards in most cases with quiet indifference.

2. THE  
FRENCH TEMPERAMENT

C. T. Muret, *French Royalist Doctrine since the Revolution* (New York, 1933)  
Those who are interested in the general subject will find it fully discussed  
in Ernest Barker, *National Character and the Factor of Its Formation* (New York, 1927)

So party divisions in France are not based upon inheritance and geography as they have traditionally been in America or on broad issues as in England. They rest in France on opposing conceptions of life. Frenchmen as individuals seem to be actuated in politics by an instinctive like or dislike of things which fit or do not fit into their own mental stereotypes. From generation to generation the rural voter learns very little that is new—and he forgets nothing. We don't like the English, said a French peasant to an American officer during the great crusade of 1917-1918—because they behaved very badly hereabouts during the Hundred Years War.<sup>1</sup>

With the dweller in the large cities it is of course somewhat different. Politically he is not so indifferent as the *paysan*, but his negative individualism is equally pronounced. Hence he reacts against doing as other men do. He wants to be his own mentor in politics. Political independence is to him a self-evident virtue; by its exercise he demonstrates that he is as good as any other man. Thereby he proclaims his allegiance to the ideal of *egalité*. So he would rather vote for a leader than for a party, a policy or a program. When a new issue arises he tries to fit it into a *grande politique* of his own.

The French Revolution recognized only the individual; it did not recognize classes as such. Fraternity was one of its three watch words; in fact the climax of the three. This traditional spirit of revolutionary days still colors the national psychology; obviously it does not lend itself to a political system in which political parties are firmly organized and strictly disciplined. It has been said, and with some truth, that the French voter goes seeking for some political issue on which he may differ from his fellow citizens rather than for one on which he and others may unite.

The crumbling of parliamentary groups in France has also been due, in part at least, to certain features of procedure, notably the plan of organizing the committees in parliament, the interpellation and the practice of putting government measures in charge of reporters rather than of ministers. Of course it may be replied that these things are not the causes of disintegration but the results of it. Perhaps that is true. It is like trying to determine the cause and effect relation between crime and poverty. Each is a cause and each is also a result of the other. Interpellations help to

TOWN AND  
COUNTRY

3 THE  
SYSTEM OF  
PARLIAMEN  
TARY PRO-  
CEDURE

keep the groups in flux but if any single group could become strong enough to command a clear majority in the Chamber the interpellation procedure would be of very little consequence

So with the practice of placing reporters instead of ministers in charge of government measures when such bills are being debated This divides responsibility and weakens leadership Ostensibly the reporter is leading the Chamber but his leadership is for the moment only and is confined to the measure in hand It is by no means akin to that of a minister who takes the floor as the sponsor of a government bill in the House of Commons The French *rapporteur* speaks for his committee not for the party group to which he belongs Members of the latter may vote against him when the measure is put to a vote And yet if everything else in French politics tended towards party solidarity as is the case in England and America this one feature of parliamentary procedure would not have a very serious effect

#### THE SERIES OF POLITICAL SCANDALS

More important as disorganizing factors in French party alignment have been the periodic injection of personal or otherwise extraneous issues Nothing seems to stir the emotions of the French electorate like a political issue which revolves around some personality especially if there be a touch of scandal attached to it Such issues do not help political parties to keep their fences firm and France has had more than her share of them At least six such convulsions during the past fifty years or so have helped to turn existing party lines askew and compel regroupings to the detriment of stability and party discipline

The first was the Wilson scandal of 1886 A daughter of President Grevy married an expatriated Englishman Daniel Wilson and brought this son in law to live in the executive mansion Sheltered under the same roof with Grevy the Englishman was believed to exercise a sinister influence over the octogenarian chief of state At any rate he was quite voluble in telling his intimates about what he could do in the way of getting presidential favors for the right people It presently developed moreover that various applicants had paid good money to shady go-betweens in the expectation that they would be given rank in the Legion of Honor

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(1896)

An investigation exonerated President Grevy from any share in the profits of this trafficking he was merely the victim of a misplaced family confidence but public sentiment could not now forgive his initial fault in having taken this miscreant from a nation of shopkeepers into the honored precincts of the Elysee So the Paris cabarets rang with the frivolous refrain *Ah! Quel malheur d'avoir un gendre!* and the old man had to go Not without effort was he wrenched from the presidential chair however for he was obstinate and fond of the emoluments At any rate the whole sordid episode was used by the monarchists and others of the extreme Right to discredit the Moderate Republicans who had chosen Grevy to the chief executive office and from whose ranks he had risen to his post of leadership It broke down a party that was on the way to become as strong as the Liberals in England

Much more dangerous to the security of the Republic as well as volcanic in its effect on party groupings was the Boulanger agitation which began about 1885 and did not end until 1891 Boulanger was a general in the French army by nature aggressive and unscrupulous with a flair for publicity Incidentally he was master of all the arts that demagogues know how to use and although a flabby character and a coward (as later events proved) he managed to acquire an immense popularity

Boulanger first leaped into the headlines as a jingo and militarist His chief assets were a uniform a cocked hat a black horse a blond beard and a mouthful of promises but his popularity caused him to be taken into the cabinet as minister of war (1886) Thereupon he startled the world by suggesting that France should actively prepare for a war of revenge against Germany As *Le general de la revanche* he was at once glorified by his million admirers Apart from the flagrant impropriety of his proposal emanating as it did from a minister of war there was the fact (obvious to all intelligent French men) that a single step in any such direction would have meant suicide for France Germany would not have waited until France could make ready for a war of revenge

In any event the Berlin authorities lost no time in branding Boulanger as a menace to the peace of Europe and virtually demanding his exclusion from the ministry The French government

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had no option but to accede whereupon Boulanger was able to pose as a martyr to republican impotence. Extremists from both flanks quickly rallied to his support for they were willing to see the Third Republic overthrown and did not much care who accomplished it. It was their plan to use him merely as a *démolisseur* not to set him at the head of a new government. Boulanger also sought to gain support from the Church in France and in some measure succeeded. Presently he found himself at the head of a strange political menage comprising irreconcilables of both the Right and the Left—both ends against the center.

HIS POSE AS  
A MARTYR.

With this combination behind him Boulanger became in 1888 an anti ministerial candidate for election in several of the departments. (At this time elections to the Chamber of Deputies were conducted under the plan of *scrutin de liste* or general ticket.) The ministry retaliated by removing him from the active list of the army & hereupon Boulanger proclaimed himself a revisionist and demanded that the constitution be overhauled. For the moment it looked as though he might accomplish what Hitler did in Germany a generation later and become dictator of France for he managed to stampede the electorate in one department after another and get himself elected by large majorities. Whenever a vacancy occurred in the Chamber he would forthwith resign his seat and become a candidate always with the same result. Early in 1889 he was triumphantly elected by the Department of the Seine in which Paris is located and then challenged the ministry to hold a general election.

HIS SUCCESS AT  
THE POLLS

This victorious march of a would be dictator greatly alarmed all the moderate party groups and they took drastic steps to deal with it. They abolished the plan of election at large and restored the district system, with a provision that no one might become a candidate in more than a single district. This put an end to the general's unbroken series of victories at the polls but it would hardly have availed to crush his crusade had it not been for Boulanger's own indiscretions and errors of judgment. By saying and doing foolish things he began to lose his hold on the populace and his star went into its declination as rapidly as it had risen. The ministry taking heart at the turn of the tide tried to hale him before the Senate for impeachment. But *le bric général* did not wait to face his accusers he fled to Belgium.

HIS COLLAPSE  
AND END



where he dealt with his own hand a final blow to the agitation by committing suicide in 1891. Nevertheless this sawdust Caesar gave the Republic a scare while it lasted. Incidentally his collapse and the manner of it discredited the extremists at both ends of the scale and divorced their *mesalliance*.

The third stormy petrel of French politics during the closing decades of the nineteenth century was Ferdinand de Lesseps the

( ) THE  
PANAMA  
CANAL  
MUDDLE

promoter who planned and built the Suez Canal. Having finished this great waterway to the Orient he sighed for a new world to conquer. So De Lesseps promoted a company to construct a sea level canal

across the isthmus of Panama. Then ensued an orgy of frenzied finance. Shares in the new company were eagerly bought by thousands of Frenchmen but much of the money was wasted before any real progress in digging the canal had been accomplished. When rumors of this mismanagement began to be noised around the officials of the company attempted to hush them up by subsidizing newspapers and bribing members of parliament. To no avail however for the whole enterprise went bankrupt and although strenuous attempts were made to refinance it they proved abortive.

Thereupon the shareholders demanded an investigation and the government unwisely tried to conceal the true state of affairs but a

ITS EFFECT ON  
THE GOV-  
ERNMENT

probe could not be avoided and in the end a sordid story of official corruption was laid bare. The evidence connecting senators and deputies with this

corruption was not altogether conclusive but innuendo made up for what was lacking in testimony as is so often the case in French public life. At any rate various leading statesmen in both the Moderate Republican and the Radical groups found themselves under a cloud. Public confidence in the integrity of more than one party group was badly shaken. Once again there was an opportunity for the extremists of the Right to strengthen themselves and they took full advantage of it.

Even before the odor of this scandal had been blown away one of even greater capacity to stir the emotions of Frenchmen began

(d) THE  
DREYFUS CASE  
(1894)

to loom on the horizon. This was the Dreyfus case which carried its echoes around the world during the closing years of the nineteenth century. Captain

Alfred Dreyfus an officer in the army was put on trial and con-

victed by court martial in 1894 for having sold French military secrets to Germany. Dreyfus was a Jew born in Alsace a member of the French general staff but unpopular among his fellow officers. His conviction and sentence to exile on Devil's Island (off the north coast of South America) did not attract much attention at the moment, but presently rumors of gross injustice began to be circulated and eventually Emile Zola, the novelist came forward with the definite charge that Dreyfus had been framed and railroaded to penal servitude in order that suspicion might be diverted from some non Jewish officers who were the real culprits. This accusation, coming from so conspicuous a source naturally created a great public commotion and before long the Dreyfus case with its Semitic and anti Semitic implications was convulsing France from the Channel to the Mediterranean.

There were charges and countercharges, investigations and interpellations, hearings and rehearings. The whole country discarded party lines and split itself into Dreyfusards and anti Dreyfusards the former including the Jews, the intelligentsia the socialists, the radicals and many moderate republicans. On the other side were most of the clergy the army officers, the jingoists, the Jew baiters of all varieties the conservatives, and the monarchists. As the controversy passed through its various stages it toppled ministries wrecked political ambitions by the score and had something to do with causing one president to resign. In the end Dreyfus was retried by court martial and again convicted but the President of the Republic on the advice of the ministry granted him a pardon. Later the court of cassation annulled the verdict of the court martial whereupon Dreyfus was reinstated in the army promoted and given membership in the Legion of Honor.

The outcome of the Dreyfus affair put the shoe on the other foot. It discredited the extremists of the Right. Likewise it welded the Republican Left and the Socialists into a bloc which remained intact for many years. Someone ought to write a book on these four horsemen of the French political arena. It is not right that biographical volumes should be restricted to men of success and achievement.

He served as a colonel in the French army during the World War and died few years later. For a full account see Alfred and Pierre Dreyfus, *The Dreyfus Case* (New Haven, 1937).

DREYFUSARDS  
AND ANTI  
DREYFUSARDS.

EFFECT OF  
THE CASE  
ON FRENCH  
POLITICS.

alone. The troublers in Israel should have their day in court on the printed page for their careers are often most instructive. Wilson, Boulanger, De Lesseps and Dreyfus—a biography of these four would be a history of party politics in France during the last fifteen years of the nineteenth century.<sup>1</sup>

With the arrival of the twentieth century France appeared to be ready for a rest from political scandals. And a vacation from personalities was in fact enjoyed for a time while the country wrestled with the question of separating church and state, an issue which will be discussed a little later. Then in 1914 came the World War followed by the peace negotiations and reconstruction with problems which absorbed the nation's entire energies. But with the return to something like normal conditions the interest of the French electorate in political scandals was resumed and this time the Stavisky case provided the material.

Stavisky was a Russian by birth but while he was still a small boy his family emigrated to France and settled in the Jewish quarter of Paris. He himself became a naturalized French man, a Roman Catholic and what was not nearly so good a rather shady financier with dealings mainly among the higher ranks of the underworld. The crowning achievement of Stavisky's meteoric career as a practitioner in the domain of frenzied finance was the Bayonne pawnshop affair. It should be explained parenthetically that in France the pawnshops are semi-official institutions. At any rate Stavisky gained control of the establishment in Bayonne, issued worthless bonds to the amount of something like two hundred million francs, got a member of the ministry to suggest their purchase by large investors such as insurance companies and succeeded in putting over the biggest swindle that France had known since Panama days. When the realities of the situation were disclosed Stavisky committed suicide (according to the official version) but millions of Frenchmen believed that he had been put out of the way because he might implicate too many persons in high places if brought to trial. So the affair was brought up for discussion in parliament where it created a turmoil and set Paris a rioting. Then it upset the ministry (1933) and strengthened the popularity of the groups on the extreme

<sup>1</sup> Interesting chapters on Boulanger, Panama, and the Dreyfus Revolution are included in Jacques Bainville, *The French Republic 1870-1935* (London 1936).

Right which had been mainly instrumental in uncovering the frauds<sup>1</sup>

### THE CLERICAL ISSUE

Religion when mixed with politics, is a disturbing factor in party alignments. The people of the United States had that fact brought home to them in the presidential campaign of 1928. But in France the issue of church and state is an age old one. It goes back to the days of Guelfs and Ghibellines, Ultramontanes and Gallicans. During the nineteenth century it had come to the front at various times, splitting the country into clerical and anti-clerical camps, but not until about forty years ago did it become an issue of paramount importance in French politics.

Before the Revolution of 1789 the Catholic Church was the established church in France; no other was recognized by the government. And the established church was very rich, having acquired great areas of land from which handsome revenues were derived, but which paid virtually no taxes. One seventh of all the lands in the kingdom it was said had passed into the dead hand of the church during the old régime. Naturally the revolutionists looked upon this opulent institution as a fair target for their confiscatory decrees. It was rich; its clergy formed a privileged order; it was part of the old Bourbon dispensation. During the turmoils therefore the revolutionary authorities set upon the church and confiscated all its lands. Then they took the clergy from under the control of the Pope and made them subject to the civil government. Religion was compelled to knuckle before Revolution, as in Germany at the present day.

When Napoleon Bonaparte assumed the reins of authority, how ever he realized the necessity of restoring religion to its proper place in a well-organized state, and he was also desirous of establishing amicable relations with the Vatican. So he concluded with the Papacy an agreement known as the Concordat (1801). This treaty reestablished the Catholic Church in France, but could not give back the confiscated lands, because these had been divided up among thousands of peasantry. It was arranged however that the clergy should be recognized as public officials and paid by the government. The

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<sup>1</sup> For an interesting account of this episode see Alexander Werth, *France on the March* (New York, 1934) chapters III-V.

priests were to be appointed by the bishops and the bishops appointed by the civil authorities but confirmed by the Pope. This Concordat of 1801 determined the relations of church and state in France for more than a hundred years.

But a close association of church and state has more defects than advantages from both sides. Inasmuch as the bishops and priests were public officials the politicians became their paymasters. It was inevitable therefore that the church should be drawn into politics as a measure of self protection. That at any rate is what happened. And it also happened that most of the clergy became allies of the monarchists and imperialists. They were against revolution and to a certain extent against republicanism. So long as France remained an empire or a monarchy—so long indeed as it seemed likely that the Third Republic might not be permanent—the anti republican attitude of the clericals was not a serious matter. But when it became apparent that the Third Republic had come to stay—then the clergy had to effect some sort of reconciliation with it which they did with great reluctance.

Unfortunately for themselves the clericals had supported Mac Mahon in his stroke of 1877 thereby incurring the wrath of the radical Republicans.<sup>1</sup> Even more unfortunately many of the bishops and priests swung into line behind Boulanger during the eighties and most of them were ranged with the anti Dreyfusards during the nineties. These misalliances greatly angered the Radicals who never ceased to repeat Gambetta's slogan *Le clergicalisme—voilà l'ennemi!* The anti-clericals had two objectives in view first to liberate the schools from the influence of the clergy and thus to ensure that the children of France would not acquire any unrepublican ideals second to relieve the public budget from the burden of paying the salaries of the clergy.

At the beginning of the twentieth century the radical groups as it happened came into power and they were not long in forcing their anti clerical program to the front. Their first move was to order the enforcement of various laws relating to religious associations which had long been honored in the breach. There are too many monks in French politics said the prime minister as he ordered these laws to be rigidly enforced. This initial skirmish was

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POLITICAL  
ERRORS

THE RADICAL  
DRIVE  
AGAINST  
CLERICALISM  
(1900-1906)

followed by the enactment of a stringent Associations Law in 1901. This provided that every religious association must obtain an official permit or be forthwith dissolved. Members of religious orders were also forbidden to give any form of secular instruction. These laws stirred up a hornet's nest, of course, but the ministry did not retreat.

As the conflict became more bitter the government broke off diplomatic relations with the Vatican (1904). Then it proceeded to abrogate the Concordat, in other words to cut the church and state asunder. A Law of Separation was drawn and enacted in 1905. This law proclaimed the gradual withdrawal of the government from all financial obligations to the church and set it free to manage its own affairs including the appointment of bishops, without civil interference. The last mentioned provision of the law would have been hailed with satisfaction by the clericals had it not been accompanied by the stipulation that the church would get no more money from the public treasury. The Separation Law also provided that all cathedrals, churches, and other ecclesiastical buildings would belong to the government, but that congregations might use them free of charge.

THE CLASH  
WITH ROME  
(1904) AND THE  
SEPARATION  
LAW (1905)

The general election of 1906 was fought on the issue of clerical privileges and the radical groups which had supported the Separation Law proved victorious at the polls. The same bloc of Leftist groups, with various shiftings, continued to dominate the Chamber down to the eve of the World War and disclosed no substantial weakening in its anti-clerical attitude during that time. But when the great emergency came upon France in 1914 there was an immediate adjournment of all party animosities and a coalition of all the leading party-groups was hastily formed under the name of the Sacred Union. This coalition was naturally less hostile to clericalism than the radical ministries had been and the same was even more true of the National Bloc which succeeded this coalition in 1919. When this national bloc remained in power from 1919 to 1924, therefore, some progress in the restoration of cordial relations between the church and state was made. France and the Vatican resumed diplomatic relations in 1921—by executive order not by law. But the ministry during these years, did not venture to repeal or modify the laws relating to the church, although it somewhat relaxed their enforcement.

OFFICE OF  
THE OFFICIAL

France is a Catholic country. Americans may wonder then why the French people should countenance any form of warfare upon the ancient church. But those who try to understand the government's point of view will find it easy enough to do so. It is simply that the church should be kept out of politics and politics out of the church. In the United States the separation of church and state is taken as a matter of course. It is enjoined in the national constitution. In the sense that France is a Catholic country the United States is a Protestant country but let anyone propose a Concordat by which all the Protestant clergymen of the United States should be put on the public payroll as school teachers are and all the churches maintained by the state as state universities are—we would think poorly of his political sophistication. The Catholic Church in America has become more virile and relatively more influential than it is in France because it has never been tied up with the civil government in any way.

#### THE SOCIALIST GROUPS

Another significant development of the past fifty years in French politics has been the growth in the strength of the various socialist groups. There were some socialists in France as early as the Revolution of 1789 and during the first half of the nineteenth century their numbers seemed at times to be growing rapidly—in 1848 for example when they took a considerable share in establishing the Second Republic. But this republic proved to be a mere interlude and during the Second Empire the socialists were hounded out of the land whenever they showed themselves. With the fall of Napoleon III however they once more came out into the open but were given part of the blame for the abortive attempt to establish communism in Paris immediately after the surrender of the city to the Germans in 1871. This made their cause unpopular in the rural parts of the country.

Socialism did not achieve its first notable success in France until it captured the trade unions during the late seventies. This was not an altogether unqualified triumph however inasmuch as the unions contained men of widely varying opinions. Some were not socialists at all some were socialists of a very mild type some were extremists. No unity among those who called themselves socialists seemed to be possible.

THE WHOLE  
PROBLEM  
FROM AN  
AMERICAN  
POINT OF  
VIEW

THE GROWTH  
OF SOCIALISM

THE SITUATION  
IN FRANCE

In due course a group calling itself Radical Socialist arose but its members were not socialists in any real sense of the term. In spite of its name this group is neither radical nor socialist, although it has frequently joined hands with the regular socialist groups in opposing the parties of the Right. In recent years they have been part of the Popular Front, but they have prevented this bloc from being genuinely a socialist combination.

Just at the turn of the century an important schism in the socialist ranks occurred. It resulted from a controversy as to whether a good socialist could enter a bourgeois ministry and continue to be a good socialist. The issue came to a crux in 1899 when Millerand, one of the prominent adherents of the party, accepted a post in the Waldeck Rousseau cabinet, whereupon the regular socialist forces ranged themselves once more into two camps—those who favored his participation and those who did not. The latter carried the day and set up a rule forbidding their members to participate in ministries with non-socialist parties. They also agreed upon a set of regulations for the guidance of the party in selecting candidates. This faction now took the name of Unified Socialists and definitely allied themselves with the Second International.<sup>1</sup> But a considerable minority declined to accept this decision and ultimately formed still another group (1910) known as the Republican Socialists.

THE  
MILLERAND  
EPISO  
(1899)

During the past thirty years accordingly there have been several groups of socialist members in the French Chamber of Deputies. Together they form at the present time the largest element in that body. At the last general election the regular Socialist party captured nearly one fourth of the seats. Its chief leader, Leon Blum, became prime minister. The Radical Socialists took over one fifth of the seats and one of the leaders of this group (Camille Chautemps) became prime minister when the Blum ministry resigned in 1937. The Communist party likewise gained a substantial representation of over seventy members in the Chamber while the Republican Socialists secured about thirty. These groups with some smaller ones, make up what is known as the Popular Front. Opposed to this bloc are various more conservative groups bearing such names as Republican

THE FRENCH  
SOCIALIST  
GROUPS.

For an explanation of the Second and Third Internationals see *below* Chapter XLI.



Federation Republicans of the Left, Independent Radicals Democratic Alliance and so on

As at present constituted the Chamber contains thirteen recognizable party groups together with about thirty members who belong to no group at all. This does not mean however that there will be the same number a year hence or that they will be known by similar names. Some of these party groups are flowers that bloom in the spring and are gone before autumn comes. Both their personnel and their names are continually changing. In France the name of a political group is not a tradition but a slogan. It is coined to fit the moment. And whatever else may be said about the nomenclature of any French party group except the Communists, one can be reasonably sure that it affords no certain clue to what attitude the group will take on any issue.

Now the foregoing paragraphs may leave a blurred picture in the reader's mind if so it is because no picture that is clear would be a true likeness. The names of the different groups, as has been said, are not always the same in the Chamber and in the Senate nor do they in all cases correspond to the organized parties in the country at large. A French deputy may call himself a conservative and yet be a revolutionist—as all French monarchists are. A Frenchman who calls himself a supporter of the Democratic Left is quite likely to be strongly conservative when judged by all the usual tests while an Independent Radical more commonly than not, is merely a trimmer without the courage to be a socialist on the one hand or a conservative on the other. Moreover when a deputy is chosen at the polls as a member of one group he may quickly affiliate himself with another. Unless he is an orthodox Socialist or a Communist he is under no obligation to stay where he is put. To what party group do you now belong? a deputy was asked by one of his voters a few months after the election. Radical Socialist the same as you elected me he replied. You don't say so was the retort. Then you are making no progress at all!

#### PARTY ORGANIZATION

We speak of these various groups as political parties because the English language gives us no other convenient term to use. But they are something less than parties and something more than

actions, a sort of halfway between. They are precisely what the French call them—groupements—in other words groups of elected representatives who bear some sort of label who may or may not be supported by regular organizations among the voters who may or may not be pledged to some definite program, who may or may not have a leader who leads them, who may or may not be subject to party discipline and who may or may not have the same label six months hence. If anyone can frame a definition of a French party group under such conditions he is welcome to the task.

CAN FRE. CH  
POLITICAL  
PARTIES BE  
DEFINED

Nevertheless it is true that some French party organizations bear a superficial resemblance to the organizations which we call political parties in the United States for they have a nationwide following they have national committees campaign funds party platforms and recognized leadership. They try to maintain discipline in their ranks. This is certainly true of the Radical Socialist party. But others have none or almost none of these party earmarks. Some of the parties which lean towards the Right and Right Center for example have no national organization at all each deputy depends for his election upon his own efforts and the members of his group are pledged to no definite program although in the Chamber they usually vote together. Some of the smaller groups are pledged to men rather than to programs and principles. When their leader shifts his group they follow him.

SOME OF  
THEM CAN

Between the party groups which are well organized in the country and those which are not organized at all there are all gradations of cohesion and discipline. In some cases the deputies are responsible to party organizations or federations in their own sections of the country (*de parlements*) but not to any control or direction in the country as a whole. In other cases they profess fidelity to some national body or program, but practice it only when it suits them. Strict partisan regularity as we understand it in the United States is not the rule in France. Most French deputies are not looked upon as insurgents when they fail to obey the crack of the party whip. In his election campaign the deputy makes all sorts of promises and he keeps on making them after he is elected but he feels under no binding obligation to join with a group that will carry them out. It reminds

NOT MANY  
ARTY  
REGULAR.

one of the way Frenchmen sing the rousing *Marseillaise*, chanting *Allons* and *Marchons* at the top of their lungs but never moving a step forward

In the Congress of the United States one cannot vote regularly with the Democrats and nevertheless remain a member of the

AN AMERICAN  
CONTRAST Republican party in good standing In the British House of Commons a Conservative who regularly

voted with Labor would be placing his political future in something more than jeopardy But in the French Chamber of Deputies no stigma attaches to the man who changes his mind his vote his group or his party—unless he is an orthodox Socialist or a Communist, in which case the offense would never be forgiven by his comrades Party regularity is tightening up in France however for French politicians are learning (as Americans have long since learned) the value of a well-oiled machine on election day The leaders of the middle parties are beginning to realize that socialism and communism cannot be effectively combated by the methods of guerrilla warfare In a word the French political parties are slowly becoming somewhat Americanized

Each group in the Chamber of Deputies is supposed to have its leader or leaders Each holds a caucus occasionally but the de-

LEADERS,  
CAUCUSES,  
AND ORGANS cisions of the caucus do not bind the members Each group (if it has fourteen members or more) is represented in proportion to its strength on all the regular

standing committees of the Chamber<sup>1</sup> Since the members of each group are seated closely together in the Chamber they usually develop bonds of personal friendship although rivalries and jealousies also develop within the rank because every member has ambitions to become eligible for a place in the ministry Each group of any importance has its own newspaper organ and sometimes several of them Thus the *Action Française* is Extreme Right, and royalist The *Echo de Paris* is Conservative and so is *Figaro* The *Journal des Débats* tries to keep in the middle of the road and so does *Intransigent* *L'Œuvre* is Radical Socialist, the *Petit Bleu* is Left Center the *Ére Nouvelle* is Radical while *Populaire* is the Socialist party organ *Humanité* is the Communist journal A few French metropolitan newspapers are independent or profess to be—for example the *Temps* and the *Jou nal*

Having got himself elected to the Chamber the deputy's next

See above p 488

job is to keep himself there. He must cultivate his own constituency by an unremitting attention to the interests of his supporters at home. For it will avail him nothing to keep the favor of his party leaders if he loses that of his own arrondissement. So he goes home every week-end if he can and works to keep his fences up. He counts upon the prefect for a benevolent neutrality at least, and for active support if he can get it. He labors to build up a personal machine with key men (usually job holders) in the vital spots. He must be much in evidence at local public gatherings and his name must get into the newspapers regularly. When the papers stop talking about you you're a dead one. The French deputy realizes it as well as the American congressman.

RACTICAL  
POLITICS IN  
FRANCE.

No French statesman of the past twenty-five years has been the recognized leader of a majority in the Chamber of Deputies in the sense that Disraeli and Gladstone or even Asquith and Baldwin were leaders in the House of Commons. No one has dominated the Chamber as Thomas B. Reed and Joseph G. Cannon ruled the American House of Representatives in their day. This is because there can be no great leaders unless there are faithful followers. It is only among the regular Socialists and the Communists, strange to say, that the realities of leadership are strictly insisted upon in the French Chamber. Strange because these are the groups whose political philosophy is most averse to the exalting of one man above the other.

MA. Y LITTLE  
LEADERS A. D.  
FEW GREAT  
O'ES.

The various groups in the Palais Bourbon have no chiefs as at Westminster and at Washington, no party bosses as at Albany or Harrisburg, and no professional lobbyists to tell them how the farmers or the manufacturers or the labor organizations want them to vote. American political parties call themselves Republicans and Democrats but their organization is neither republican in form nor democratic in fact. It is monarchical and oligarchic. A French group may call itself royalist, but it goes on the principle that all politicians are equal in the eyes of the law and the prophets. Nothing riles a Frenchman so much as to call him a henchman of somebody else. He wants it clearly understood that he is his own boss—outside his home at any rate.

Still, if one looks back over the course of European history during the past sixty years the political parties in the French Republic have not given parliamentary government a bad record. France

during these six decades has maintained domestic tranquility developed a fine system of public education at  
 FRANCE developed a fine system of public education at  
 AMONG THE tained a high and well distributed economic pros  
 NATIONS perity enlarged her colonial empire fought a great  
 war successfully redeemed her lost provinces reconstructed her  
 shell torn areas and made herself a dominating factor in the new  
 League of Nations Did there ever appear on earth asks  
 Tocqueville another nation so fertile in contrasts so extreme in  
 its acts more under the dominion of feeling and less ruled by  
 principle so fickle in its daily opinions and tastes that it  
 becomes at last a mystery to itself endowed with more heroism  
 than virtue more genius than common sense the most danger  
 ous nation of Europe and the one that is surest to inspire admira  
 tion hatred terror or pity—but never indifference?

#### CONTEMPORARY PROBLEMS

The economic depression which began in 1929-1930 proved to  
 be almost world wide in its scope In France as in other countries  
 it resulted in a slackening of industrial production  
 FRANCE AND and a general fall in prices Although peasant agri  
 THE GREAT culture is the basis of the French economic structure  
 DE RESSION with millions of small farm owners this did not render the country  
 immune from trouble for agricultural prices went down with the  
 rest And the figures of unemployment rose to a huge level To  
 make matters worse the cost of living did not decline in any sub  
 stantial measure hence there were loud demands for remedial  
 action from all sections of the country

There were two ways in which this problem might be approached  
 The government could devalue the franc or reduce its gold content  
 thus inflating prices It might also take the country  
 IN LATION OR off the gold standard altogether which is what the  
 DEFLATION? governments did in Great Britain and the United  
 States But the French people had been through one inflation ten  
 years before and they didn't want to go through another So the  
 government chose the other alternative deflation This involved a  
 drastic lowering of salaries wages interest rates taxes and rents  
 in order to reduce the costs of production But deflation is equally  
 unpopular as the French authorities soon discovered Lower wages  
 meant less purchasing power in the country as a whole with a  
 smaller demand for goods a further slackening in business and in

creased unemployment. More money had to be spent for relief and as taxes could not be raised the government resorted to borrowing on a large scale. Great difficulty was experienced in the attempt to keep the country on the gold standard because investors sensed the danger and gold began to be shipped abroad for safety.

During the years 1932-1934 France had six different ministries. Each of them toppled within a few months before the rising tide of popular discontent. Impatience with the seeming helplessness of parliamentary government led to the formation of quasi fascist organizations such as the *Croix de Feu* which was composed of war veterans and various smaller groups under leaders who sought to capitalize the general unrest. The movement developed rapidly with all the characteristics of Hitlerism in its earlier stages save that these French organizations did not have any outstanding leader to draw them together. The climax came during the early months of 1934 when their indignation over the Stavisky scandal led to demonstrations in Paris which the government suppressed with considerable bloodshed.

THE FASCIST  
DANG. R.

Alarmed by this growing strength and aggressiveness of the various semi fascist groups the Socialists, Communists and other parties of the Left tried to get together. Such a combination now appeared to be possible because they had decided to give up their program of world revolution and cooperate with other groups against the fascist danger. After a good deal of negotiating and compromising a bloc known as the Popular Front was formed with a program which although by no means revolutionary called for a new deal in France. Combining their forces in the French parliament the groups of the Popular Front then passed legislation outlawing the more militant among the fascist organizations those which were endeavoring to build up bodies of storm troops or armed partisans on the German and Italian model. Then at the general election of May 1936 they managed to capture a large majority in the Chamber of Deputies.

ORGANIZA  
TION OF  
POPULAR  
FRONT

This victory gave confidence even over confidence to the masses of the French industrial workers (especially those organized in the *Confederation Generale du Travail*) and they demanded that a far reaching series of industrial reforms be put into effect at once. The demands were accompanied by a great wave of strikes mostly of the sit down variety. The new

THE  
WORLD AL  
IN RANCE

government hastened to settle these labor troubles by negotiations with the strikers in the course of which most of their demands were granted. These included a general increase in wages and a recognition of the right of labor to bargain collectively. Then when parliament came into session a whole grist of new deal legislation was enacted. This established a forty hour week a fortnight's vacation with pay for every worker and compulsory arbitration of labor disputes. Likewise it provided reduced fares on the railroads for all workers during their vacations and for the inauguration of a public works program as a means of alleviating unemployment. As these concessions imposed a considerable new burden on industry an arrangement was made whereby industrial establishments might obtain government credit with which to tide over the transition.

The Popular Front did not confine its solicitude to the industrial workers alone. It set out to help the French farmer also for France

is still a predominantly agricultural country. One of its first steps was to establish a national wheat office with the function of maintaining a remunerative price for grain by curbing speculation and controlling the profits of dealers. This office set up a standard price for wheat and arranged that excess supplies should be stored or exported. To prevent profiteering by millers and bakers the local prices for flour and bread are fixed by the prefects and mayors. By these and other measures for the control of agricultural surpluses the plight of the French farmer has been somewhat ameliorated.

The remilitarization of the German Reich has alarmed all classes in France and the Popular Front has found itself under the necessity of greatly strengthening the defensive capacity of the Republic. But its leaders were determined that the expansion in armaments should not be a source of undue profit to the makers of munitions and military supplies. Accordingly a law was passed permitting the government to take over in whole or in part any concern engaged in the manufacture of guns gas masks tanks war vessels military airplanes ammunition or other such supplies. And it was further provided that when armament concerns were not taken over by the government they should be placed under strict control. In pursuance of this authority a number of establishments have been nationalized and are now managed as government enterprises. Compensation of course is given to the expropriated owners. Regulations have been promul-

AGRI  
CULTURAL  
RELIEF

THE AR  
MAMENT  
PROGRAM

gated for those concerns which are not yet nationalized. In some cases as for example in the airplane industry the government has become a majority stockholder leaving room for private investment. Difficulties of course have been encountered in determining the limits of the nationalizing program for many establishments manufacture both commercial and military products. This is true of chemical industries tractor plants airplane factories and ship building concerns. To take over everything that is directly or indirectly engaged in the manufacture of armament or in supplying the basic materials for armament would involve government ownership on an almost unlimited scale.

A new deal always costs huge sums of government money and France has proved no exception to the general rule. The Popular Front inherited a difficult financial situation due to a long series of unbalanced budgets and an enormous public debt which absorbed about one fourth of the government's annual revenues. Then it found itself committed to expenditures on a greatly increased scale without the possibility of similarly increasing its revenues from taxation. The result was a larger deficit and heavier borrowing. Capital began to migrate from France to other countries in steadily larger volume and it became necessary to forbid the exportation of gold. Then a law was passed (October 1936) which devalued the franc and set up an equalization fund to maintain it at the new ratio. Meanwhile in order to facilitate its own handling of the country's public finances the government virtually took the Bank of France under control. This institution had been a close corporation managed by a relatively small group of large stockholders yet it ranked as the greatest single factor in the financial life of the country. The Blum government in 1936 obtained from parliament a law which left the bank in private ownership but provided that its governor vice governors and a majority of its directors should be named by the public authorities leaving the stockholders to elect only a minority of the board. Under this new arrangement the government controls the operations and the reserves of the bank. It can manipulate either to serve its own purposes.

But despite borrowings devaluation and bank control the French treasury was emptied and in the early summer of 1937 the Blum ministry went to parliament with a request for a blank check in other words for authority to handle the financial crisis by decrees as



it saw fit The Chamber of Deputies complied with this request after it had been assured that the unlimited decree making powers would only be used to reduce expenses increase taxes prevent evasions and inaugurate other financial reforms But the Senate rejected the ministry's request by a large majority and after negotiations for a compromise proved fruitless the cabinet resigned There was much talk of fighting the Senate to a finish but such action would have involved a long conflict and meanwhile the government would have been powerless to deal with the critical situation

So Blum resigned as prime minister and was succeeded by Chauvignery with a somewhat reorganized cabinet in which the former prime minister was given a place The new ministry like its predecessor represented the Popular Front It asked parliament for large but not unlimited power to handle the situation by decrees and this authority was granted with the Senate's concurrence Under the guidance of a new finance minister the government thereupon set out to balance the ordinary budget by levying new taxes raising postage rates increasing fares on government railroads and charging higher prices for tobacco products which in France are a government monopoly Great economies in expenditure were also effected and instead of trying to support the franc in international exchange it was left to find its own level Likewise the new ministry set out to win the confidence of French industry by giving it a breathing spell from reform

All this of course was something of a disappointment to the more radical wing of the Popular Front but even radicals must accommodate themselves to the fact that if a government cannot make its budgets balance it must borrow and it cannot keep borrowing unless those who have money can be persuaded or forced to lend it In dictatorships they can be forced but in democracies they have to be persuaded and persuasion is not easy when investors have lost confidence in the government The Chauvignery ministry did not manage to restore this confidence Within a few months it was forced out of office and Blum once more took the helm But not for long because he found the economic situation becoming steadily worse and once more (1938) went before parliament with a request for a free hand in reorganizing the nation's finances The Chamber of Deputies agreed to his proposals but the Senate rejected them whereupon the ministry resigned and was replaced by a new cabinet

AN EMPTY  
TREASURY—  
AND THEN  
WHAT?

THE  
CHAUVIGNERY  
PROGRAM.

with Edouard Daladier at its head. This group was drawn from the Radical Socialists for the most part but it also included a few members from parties somewhat farther to the Right. Whether it can keep itself in office for any length of time is doubtful in view of its tenuous hold on the Chamber of Deputies.

There are those who believe that France cannot solve her national problems with her existing parliamentary scheme of government. Democracy in France, they say, is slowly dying. The parliamentary system and ministerial responsibility, it is claimed, are growing steadily more unpopular. Beset by Nazi and Fascist dictatorships north and south, there is a fear that France may eventually be forced into a desperate attempt to solve her serious problems by some radical change in the structure of her government. The immense majority of the French people remain attached to the democratic ideal but a nation will not long tolerate chaos in the name of democracy. Today France stands as the last great outpost of parliamentary government in Continental Europe. With her back to the wall can she keep on saying to the foes of civil liberty as she did to the invading Germans at Verdun: "They shall not pass"? That question may be answered within a very few years.

CAN FRE. CH.  
DEMOCRACY  
E. DURE.

Meanwhile most Americans when they discuss the strong and weak features of democratic government assume that the two-party system is preferable to any other. They may be right, but it is by no means certain. A multiple party system means divided responsibility and lawmaking by compromise—both of which many people look upon as things to be avoided. They prefer concentrated responsibility and lawmaking by a disciplined majority. But unified responsibility sometimes shades into presidential or ministerial dictatorship while lawmaking by the crack of the party whip is too often a synonym for political oppression. Two party groups in a parliament or congress do not, and cannot, reflect all the differences of opinion that arise among the voters. It may require half a dozen party groups to do it even fairly well.

IS ARTY  
DECENTRALI-  
ZATION AN  
E. TL.

Lawmaking and the determination of public policy under the multiple party system must proceed by compromise but it is yet to be demonstrated that lawmaking by compromise necessarily gives less satisfaction to the country as a whole. The first and best piece of legislation ever put upon the statute book of the United States, the federal constitution, was the outcome of a great many compromises—between north and

LAWMAKING  
BY COM-  
PROMISE.

south between big states and little ones between federalists and anti federalists between seaboard and hinterland The system of checks and balances which this constitution established ensures a certain amount of lawmaking by compromise even when a political party is in complete control But France has no network of checks and balances so she must endeavor to attain the same end by her multiple party system

The most systematic treatise on the subject of French political parties is Léon Jacques *Les partis politiques sous la troisième république* (Paris 1913) Smaller and more recent surveys of real value are F Corcos *Catéchisme des partis politiques* (Paris 1928) and G Bourgin J Carrere and A Guérin, *Manuel des partis politiques en France* (Paris 1928) Raymond L Buell's *Contemporary French Politics* (New York 1920) contains an interesting discussion of party organization aims and problems and there is an excellent hundred page survey in Robert Valeur *France* (see above p 416) pp 456-556 Mention may also be made of the *Tableau des partis en France* by Andre Siegfried (Paris 1930)

Recent books of varying value are Leon Blum *Le régime gouvernemental* (Paris 1936) Alexander Werth *France Ferment* (New York, 1934) Ralph Fox *France Faces the Future* (London 1936) Andre Tardieu *France in Danger* (London 1935) Maurice Thorez *France Today and the Peoples Front* (London 1936) Carleton J H Hayes *France A History of Politics* (New York 1930) R H Soltau *French Politics and Parties 1871-1930* (London 1930) and the same author's *French Political Thought in the Nineteenth Century* (New Haven 1931) Current governmental developments are recorded in *L'Annuaire politique* and in the *Revue politique et parlementaire*

On the Boulanger episode see A Meunier *Le coulis du boulangisme* (Paris 1890) The Panama scandal is lucidated in Quesnay de Beaurepaire *Le Panama et la politique* (Paris 1899) and in G de Belot, *La vérité sur le Panama* (Paris 1889) The monumental work on the Dreyfus case is J Reinach *Histoire de l'affaire Dreyfus* (4 vols Paris 1924) For the opposing side of the case the best book is Dutrait Cozon *Procès de l'affaire Dreyfus* There is also an English translation of the autobiographical account *Autobiographie de Dreyfus Cinq ans de prison* (Paris 1905)

On the question of church and state a valuable volume is that of Paul Sabatier *Débats historiques en France* (Paris 1906) Antoinette Debidour *Legislation politique et constitutionnelle de la France 1870-1906* (2 vols Paris, 1906-1909) is anti-clerical The other side is set forth in L R P Lecanuet *Legislation de France sous la troisième république* (3 vols Paris 1930)

A concise and informing discussion of *The New Deal in France* by John C deWilde is published by the Foreign Policy Association (Foreign Policy Reports Vol XL No 12 September 1 1937)

## CHAPTER XXIX

### FRENCH LAW AND LAW COURTS

The is no better test of the excellence of a government than the efficiency of its judicial system, for nothing more nearly touches the welfare and security of the average citizen — *Lord B. J.*

Out of the chaos which followed the collapse of the Roman empire there arose and spread over most of Western Europe a great system of political and social relations known as feudalism. It was an institution based upon the tenure of land. The lord gave his vassals land and protection; the vassals gave him services in return. He too was the law giver within his domain and the source of all justice. This was the very essence of feudalism and its effects were far reaching. The student of modern government is usually aware of the fact that feudalism rose in mediaeval Europe and ultimately fell, but he does not always realize that its influence continued long after the system itself had passed away.

THE  
IN LUX. CE OF  
FEUD. LHM  
ON LAW

Anyone who compares the legal development of England and France from earliest times down to the beginning of the nineteenth century will be impressed by the striking contrast which marks the evolution of law and law courts in the two countries. These two nations are neighbors with only a narrow strip of water between them, but their respective legal backgrounds could not be more dissimilar if they were situated in different hemispheres. And the reason for this is not hard to explain. It is to be found in the fact that England never became so thoroughly feudalized as France. At an early date there developed in England a strong, centralized monarchy which mastered feudalism, gave the country a unified legal system, and established the supremacy of the royal courts.

IN E. GLAND  
AND IN  
FRANCE

Feudalism, as everyone knows, was a disintegrating force. It divided countries into principalities, dukedoms, baronies, and fiefs, each of which was virtually independent. Save for a shadowy allegiance to the king, each feudal duke or count or baron was supreme.

within his own domain. Hence it was that every section of northern France developed its own distinct system of customary law, its own *coutume* as it was called. These in due course were put into written form and administered by the local courts. The *Coutume de Paris* was the most notable among these bodies of localized law but there were hundreds of others and they differed greatly in character. The multiplicity of *coutumes* was so great that as Voltaire once said, a man who went across France changed laws as often as he changed horses.<sup>1</sup> It was not so in England. There in the early days bodies of local customs had begun to develop but the centralizing power of the monarchy proved too strong and they were submerged by the rise of the common law which was the king's law common throughout the whole country and uniformly administered by the royal courts.

Down to the Revolution of 1789 accordingly there was no system of common law in France. But this does not mean that there were no rules of law which applied uniformly throughout the whole country. Superimposed upon the *coutumes* was a body of edicts, decrees and ordinances issued by the king. As the French monarchy grew in strength during the sixteenth and seventeenth centuries it became the practice to issue elaborate ordinances on various subjects and in the reign of Louis XIV (1662-1715) a long series of them appeared the *grandes ordonnances* they were called. Some of these royal edicts were veritable law codes dealing in a comprehensive way with such matters as commerce, wills, trusts and judicial procedure and they applied uniformly to the whole of France. Most of these great ordinances were issued on the authority of the king alone for no elective parliament met in France from 1614 to the eve of the Revolution.<sup>2</sup> This whole body of royal legislation however covered only a small part of the entire field and hence did not serve to unify the legal system of the country.

In the southern part of France the *droit de coutume* as it was called the principles of Roman law were more generally and uniformly applied but even here they were somewhat modified by local custom.

There was a requirement that every royal edict or decree must be registered by the Parliament of Paris before it could become valid. But this body was not a parliament in any real sense its members were appointed by the king. And if they declined to register an ordinance (as they did on a few occasions) the king could in defiance of the *parlement* and override the opposition by the use of a prerogative known as the *let de jussion*.

THE FRENCH  
COUTUMES  
IN CONTRAST  
WITH THE  
ENGLISH  
SYSTEM OF  
COMMON LAW

THE FRENCH  
LEGAL  
SYSTEM  
BEFORE THE  
REVOLUTION

Very different it may be repeated was the course of development in England where the legal supremacy of the crown over the whole country was asserted by William the Conqueror and made good by his successors at a very early date. The kings sent their judges on circuit from county to county these itinerant justices presided in the county courts and gradually established *uniformity* in the interpretation of both customs and laws. The Curia Regis in its hearing of appeals also provided a consolidating influence. Long before the close of the mediaeval period England was able to place her law and her courts on a national basis while France did not manage to do so for several centuries thereafter. To the French people this was an enormous handicap for a common law is one of the greatest unifying forces known to human society second only to a common language.

A CONTRAST  
WITH  
ENGLAND

The leaders of the French Revolution were well aware of the weakness which this legal demoralization engendered. They knew that it constituted a barrier to the creation of a truly national sentiment that it stood in the way of the *fraternité* which the Revolution was seeking to create. Not only this but they felt very keenly that the *coutumes* were mediaeval in spirit antiquated out of tune with the legal requirements of a modern age. Revisions had been made from time to time it is true but these revisions had not changed the spirit of the laws. Revising a *coutume* was like touching up the portrait of a mediaeval knight and calling him a modern aviator. So the revolutionists decided that these bodies of customary law must go.

THE  
SITUATION  
WHEN THE  
REVOLUTION  
CAME

In keeping with this decision the Revolutionary Assembly proceeded to abolish the greater portion of the old jurisprudence. Various general statutes applying to the whole of France were enacted instead. Then it seemed desirable to consolidate these new statutes together with what was left of the old law into a series of codes and the revolutionary government set its hand to this enterprise but it was no small task and for a time very slow progress was made. This revolutionary government moreover had matters of much greater urgency to deal with during the closing years of the eighteenth century. Hence it was not until Napoleon came into power that the work of codifying the whole jurisprudence of France was speeded up and finished. The Corsican went at the

THE ABOLITION OF THE  
COUTUMES  
AND THE ROMULGATION OF  
THE CODE CIVIL

project with characteristic energy and completed it within a few years

Napoleon was very proud of this exploit. During his exile at St. Helena he referred to it as the greatest achievement of his age and

THE FAR REACHING INFLUENCE OF THE NAPOLEONIC CODIFICATION one that would profit France more than a score of brilliant victories. My code alone, he said, has done more good in France than the sum total of all the laws that preceded it. In this he was right for the Code Napoleon has had an immense influence upon legal development in all parts of the world. It has extended its legal principles and doctrines to the uttermost part of the earth to regions where the tricolor never flew. The present systems of civil law in Italy, Spain, Portugal, Belgium, and in nearly all the Latin American states are based upon it. The civil codes of Germany, Japan, Greece, and many other countries have drawn upon it heavily. It has had a greater vogue and a wider influence than the common law of England. It has perpetuated and revived much of what was best in the civil law of ancient Rome. Its provisions, as Napoleon himself once boasted, not only preach toleration but organize it—toleration the greatest privilege of man.<sup>1</sup>

The emperor did not himself do the work, of course, but he selected the jurists and gave them their inspiration. It was his driving power that put the codes into effect. They are his most enduring monument. When you go to Paris and look upon the marble cenotaph where rest the bones of this astounding man, you will see emblazoned there the names of his great military victories—Marengo, Wagram, Austerlitz, Jena, Friedland, and the rest. But you will find no mention of the greatest service that he rendered to France and to the world. In history Themis has never been so glamorous as Mars.

The Code Civil (to use its modern republican designation) is as only the first of a series. Within the next half-dozen years four other

THE OTHER CODES codes were compiled and promulgated. These dealt with civil procedure, criminal law, criminal procedure and commerce. Before Napoleon relinquished his imperial throne he had established throughout the whole of France a single system of law and legal procedure. Revisions of this system have taken place at intervals, but the fundamentals remain

unchanged<sup>1</sup> The Napoleonic codes were so comprehensive that they left relatively little to be covered by subsequent legislation In France as a consequence there has been no such outpouring of statutes as has taken place in England in America and in the British self governing dominions This however is not an unmixed blessing inasmuch as the codifying of a legal system conduces to rigidity It is sometimes said that the codes have tended to stereotype the legal system of France and to take from it that quality of quick responsiveness to new economic needs which every progressive legal system ought to have<sup>2</sup>

This suggests reference to a distinctive feature of French law and legal interpretation In Great Britain and in the United States the law is being constantly developed expanded and even altered by judicial decisions Both these countries have built up great bodies of judge made law Although it is the theory of Anglo-American jurisprudence that the judges have no authority to change the law but only to interpret and apply it everybody knows that English and American courts do in fact, make changes often very considerable changes

A DISTINCTIVE  
FEATURE OF  
MODERN  
RE. CH. LEGAL  
CLOP-  
MENT

One judicial decision advances a little upon another and so on year after year until there exists a wide gulf between the law as it is and the law as it was Simple words and phrases receive new shades of meaning and ultimately acquire new meanings altogether This gradual modification of the law by judicial decisions has been made possible in England and the United States by the traditional respect which the courts always render to precedent The doctrine of *stare decisis*—the doctrine that a court will always be guided by previous decisions unless there is a compelling reason for reversal—has resulted in giving judge made law a definite drift and direction

THE DOCTRINE  
OF STARE  
DECIS

But in France there is no such doctrine On the contrary it is definitely understood that no court is under any obligation to be guided by its own previous decisions or even by the decisions of a higher court Precedents may be cited in the French courts and frequently are but no great re-

DOES NOT  
EXIST IN  
FRANCE

In 1904 on the centenary of the *Cod Civil*, there was a somewhat extensive

Some of the American states and the British dominions also have codes—civil codes, criminal codes, and codes of procedure but they are not so comprehensive as those of France and their provisions are constantly being adjusted to new conditions by means of judicial interpretation.



hance is placed upon them, and the judges are free to disregard even the weightiest precedents if they feel so inclined. When a French tribunal gives a decision which directly contravenes some previous ruling nobody says (as we do in America) that the court has reversed itself. It has merely changed its mind or its attitude in accordance with altered conditions as every French court is expected to do. At the same time it is impossible for any court, in any country to decide every case on its own individual merits without some reference to what has already been adjudged in similar cases. The prestige of a judiciary demands that its decisions shall be reasonably consistent.

So while the doctrine of *stare decisis* has never had any formal recognition in France and while no great body of controlling decisions has been built up as in America there is nevertheless a definite judicial consensus on many fundamental questions. In other words while the courts are free to disregard precedent they have found in the nature of things that it is easier and better to maintain a reasonable standard of consistency in their interpretations of the law. Side by side with the written provisions of the codes they are gradually building up therefore a small body of judge made laws which fills the lacunae and clears the obscurities.<sup>1</sup>

There is another feature of the French judicial system which the American student will do well to note. France has a written constitution embodied in a series of constitutional laws. And the French constitution like the American is ostensibly the supreme law of the land hence any ordinary law which conflicts with its provisions is said to be unconstitutional and void. But no French court has the power to declare a statute unconstitutional and to annul it on that ground no matter how repugnant to the constitution the statute may be. No such power is expressly given to the courts by the French constitution and it has not been acquired as in the United States by usage.

What happens then if the French parliament passes a law which contravenes a constitutional provision? Suppose it should pass a statute providing that decrees of the president may be promulgated without the countersignature of a minister although the constitution expressly stipulates to the

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LESS PRECE  
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NO PRACTICE  
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CONTRADICTORY

contrary? The question cannot be authoritatively answered because the two French chambers have never yet enacted a law in direct contravention of a constitutional requirement. It has been suggested that the presiding officers of the Senate or the Chamber would not allow an unconstitutional measure to be introduced and it has likewise been asserted that the President of the Republic might refuse to promulgate such a law if it were passed and thereby withhold it from going into force but it is highly improbable that any president would assume such a responsibility. Certain it is in any event that no court would assume the onus of interfering.

This is because the constitutional laws of 1875 say nothing about the courts how they shall be organized or what their powers shall be. The whole matter is left within the jurisdiction of the French parliament hence a conflict between the judiciary and the legislature in France could have only one outcome. The courts are created by law and by law their powers could be curtailed. They might declare one law unconstitutional perhaps but parliament would see to it that they never did anything of the sort again. Through its lack of constitutional protection therefore the French judiciary does not possess the independence or the powers that have been acquired by the judiciary in the United States. It is not the habit of Frenchmen to look upon the judiciary as a separate branch of the government distinct from the legislative and executive branches. They regard the courts as administrative agencies subject to the same kind of control.

Some other general contrasts between the French and American judicial systems remain to be noted. In France all the courts are localized the judges sit at a fixed place and never go on circuit as is the practice to a considerable extent in both England and America. In France moreover every court except the very lowest is provided with a bench of judges in no higher court does a single judge give decisions. Every decision of a French court (save in the very lowest courts) must be rendered by the concurrence of at least three judges. There is an old French proverb *plus que justice* which expresses the public sentiment on this matter but it has no justification as the history of English and American courts has shown. A single judge is no less careful and no less fair than a bench of judges. On the contrary he assumes the entire responsibility for it

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whereas such responsibility is dissipated when decisions are rendered by a vote of three judges against two or of five against four.

As a result of this full bench system the total number of judges in France is very large—nearly six thousand in all.<sup>1</sup> From time to time

THE LARGE NUMBER OF JUDGES it has been proposed to cut down the excessive number in France by having single judges sit in the courts of first instance, but the collegial tradition has always proved too strong.

Attempts have also been made to reduce the number of courts, of which there are far too many, but here again there has been opposition from the regions immediately affected. The deputies agree with the idea in principle, but not in its application to their own constituencies. It is as difficult to abolish a superfluous court in France as to eliminate an obsolete land office or navy yard in the United States.

In England and in the United States the judges are recruited from the legal profession. An appointment to the bench is regarded

HOW FRENCH JUDGES ARE CHOSEN as the recognition of a successful career at the bar. In France this is not the case. Members of the French judiciary are regarded as the representatives of a separate profession, with no close relation to the active practice of the law.

The young Frenchman, when he begins to study law, decides whether he wants to be a lawyer or a judge, and plans his studies accordingly. If he chooses a judicial career he does not hang out a sign and hustle for clients when he has finished his course. He goes at once into service as a subordinate court official, sometimes without pay. Then, if he displays ability, he may become a *procureur* (official prosecutor) or a substitute judge in a court of the first instance. In time, if he earns promotion, he will become a regular judge of this court and eventually the presiding judge of it. From this position he may be named as a *counseiller* on one of the courts of appeal, and if he sufficiently distinguishes himself among his colleagues there he will ultimately attain the zenith of his aspirations by donning the red robe which is the insignia of the court of cassation.

In other words, the French judiciary is regarded as a branch of the civil service for which a special form of training is required. This is quite contrary to the tradition in the United States where any lawyer is deemed fit to be a judge if he can get himself appointed or

THE JUDICIARY BRANCH OF THE CIVIL SERVICE In the lower courts they are called *juges*; in the higher courts they are called *magistrats*.

elected. There are no elective judges in France. An elective judiciary was established during the Revolution but it proved a failure and Napoleon abolished it in 1804. No serious attempt to revive it has been made under the Third Republic. The French people despite their faith in democratic ideals realize that the effective administration of justice is something that calls for specialized skill and experience. All French judges are therefore appointed by the President of the Republic on recommendation of the minister of justice. Most of them hold office for life and cannot be removed except by consent of the court of cassation.<sup>1</sup>

Most conspicuous of all differences between the French and American legal systems however is the separation which the former makes between ordinary law and administrative law between ordinary courts and administrative courts. It is sometimes said that France has one system of law for the ordinary citizen and another for the public

THE DUAL  
SYSTEM OF  
LAW AND  
COURTS

official but this as will be shown in the next chapter is not a fair way of stating the matter. The French system of administrative law redounds to the benefit of the ordinary citizen and not to his disadvantage. It affords the Frenchman a measure of redress against his government which the American citizen does not obtain. The remedies which the French citizen has against his government are speedier, cheaper, and in every way more satisfactory than those which Americans possess in relation to their national and state governments. This whole question is of sufficient importance to deserve full discussion later, meanwhile it is enough to emphasize the fact

that France has two distinct sets of courts known as regular courts and administrative courts each with its own judges, jurisdiction and procedure.

#### ORGANIZATION OF THE REGULAR COURTS

The regular courts administer the civil and criminal law. The lower among these courts in France as in England, are the local courts presided over by the justices of the peace (*juges de paix*). There is one such court in every rural district and several in each of the large cities. This court has jurisdiction in civil controversies where the amount involved is small and in criminal cases where the offense is a minor one. The proce-

THE  
REGULAR  
COURT

dure is informal and inexpensive The *juge de paix* spends most of  
 his time straightening out misunderstandings his main  
 function being to prevent lawsuits not to try them.  
 In his days routine he deals with neighborhood  
 quarrels over land boundaries trespass and minor damages to  
 property disputes between landlord and tenant liens on small sal-  
 aries and accidents to workmen It is not so much a knowledge of  
 the law as a knowledge of human nature that the French justice  
 of the peace needs in his work

Next come district courts or courts of the first instance There is  
 at least one of these in every department and it is always provided  
 with several judges at least three and sometimes as  
 many as fifteen Where there are more than six judges  
 the court may divide itself into sections each sitting in  
 different towns within the department The judges sit together one  
 of them serving as presiding judge and render their decisions by  
 majority vote No statement as to the number of dissenting judges is  
 ever made Each court is assisted by a public prosecutor (*procureur*)  
 who conducts the cases as is done by the prosecuting attorney or dis-  
 trict attorney in the United States

The courts of the first instance hear appeals from the decisions of  
 the justices (where small sums are involved otherwise the decision  
 of the lower court is final) and have original jurisdic-  
 tion in all civil controversies no matter how large the  
 amount involved They also have original jurisdiction  
 in a limited range of criminal cases But all their decisions in criminal  
 cases and in civil cases involving large amounts may be appealed to  
 the higher courts The courts of the first instance do not use juries

Then there are courts of appeal twenty seven of them in all  
 Each court of appeal is also made up of a bench of judges (*conseil-  
 lers*) and its jurisdiction extends over a judicial prov-  
 ince each of which contains from one to seven of the  
 French departments The court of appeal at Paris for  
 example has jurisdiction over the Department of the Seine and five  
 other departments These courts sit in sections each section having at  
 least five judges one of whom serves as presiding judge of the section  
 There is a civil section a criminal section and an indictment section  
 (*chambre d'accusation*) which performs the functions of a grand jury

Each section of the court of appeal is assisted by one or more pub-

On f Alg n , one f Co sca and twenty fi for F an c.

THE JUGE  
DE PAIX

2 COURTS OF  
THE FIRST  
INST NCE

THEIR JURIS-  
DICTION

3 THE  
COURTS OF  
AP EAL

lie prosecutors known as *procureurs généraux* also by various assistant prosecutors attorneys bailiffs and other court functionaries In France all these *procureurs avoués huissiers* and so on are regarded as members of the judiciary The regular judges are known as the *sitting* judiciary while the others make up the *standing* judiciary This is in truth a realistic way of differentiating them No juries are used by the court of appeal in any of its sections The work is confined almost entirely to the hearing of appeals from the courts below more particularly to the hearing of arguments on points of law In most instances the decisions of a court of appeal are final

The civil procedure in these courts of appeal seems strange to an American lawyer The case is prepared both sides of it, by *avoués* or attorneys They make out the complaints and replies rebuttals and replications for which they charge their clients a stiff fee and which they serve on one another by means of pompous *huissiers* or uniformed bailiffs whose services are also expensive The judge waits until the lawyer have finished this interchange of documents and then listens to oral argument on such points as are still in disagreement He does not see the clients for the clients do not come into court They may be fictitious persons so far as the judges are concerned Sometimes they are—French versions of John Doe v Richard Roe No oral evidence is presented in the French courts of appeal It is all in the form of documents When the arguments have been concluded by the attorneys the judges confer and reach a decision

Serious criminal cases are tried in the courts of assize These courts of assize have no jurisdiction in civil controversies they deal with criminal appeals only There is one such court for each of the eighty nine departments in France Rather curiously they do not form a separate rung in the ladder of regular courts but are specially organized four times a year or oftener The presiding judge is named from one of the courts of appeal by the minister of justice his two associate judges are drawn either from a court of appeal or from a court of first instance This is the only French court which uses a jury and it sits with a jury in practically all cases Juries are never used in France for the trial of civil suits

Incidentally however they may deal with the claims of a civil party in a criminal case See below p 548 footnote.

PUBLIC  
PROSECUTORS

METHOD  
LEADING

THE  
OF TRIALS OF  
ASSIZE

The trial jury in France (as in England and America) is composed of twelve persons chosen by lot from a panel of citizens but its procedure is somewhat different from that with which Americans are familiar For one thing its decisions are reached by majority vote and do not require unanimity But when the vote stands six to six or seven to five for conviction the three judges if they are unanimous may render a verdict of acquittal Abortive jury trials through failure to reach an agreement are therefore very rare

The jury system is not indigenous in France but was transplanted from England And like most transplanted institutions it does not seem to be giving satisfaction Its critics are numerous and vehement One authoritative French jurist has declared that in many cases the courts might as well

allow justice to depend upon a throw of the dice as upon the verdict of the jury Composed exclusively of petty shopkeepers he goes on to say it often shows extreme severity towards attacks on property and a surprising indulgence to personal assaults <sup>1</sup> Others have stigmatized the French jury as a sacrifice of common sense to an Anglo-Saxon superstition and one that merely works havoc with the orderly administration of justice Too much weight however should not be given to such aspersions There are many Americans who feel the same way about the jury system yet its merits in the United States clearly outweigh its shortcomings It is easier to detect flaws in the system of trial by jury than to suggest something better in its place

The supreme court of France for all ordinary cases both civil and criminal is the court of cassation <sup>2</sup> Its jurisdiction covers the whole of France this being designed to ensure uniformity in the interpretation of the laws But it is not a supreme court of appeal in the usual sense because it has nothing to do with the facts of a case its function is merely the cassation or annulment of lower court decisions which have wrongly interpreted the law

The court of cassation sits in Paris and has a bench of forty nine judges including a first president three presidents of chambers and forty five councillors In addition there is a *procureur general* and several assistants Like the courts of appeal this highest court does its work in sections or

Joseph Barth in my *The Government of France* (New York 1924) p 176  
The name comes from the verb *cas* to quash, or annul.

chambers. Two chambers deal with civil and one with criminal cases.<sup>1</sup> The court of cassation has no original jurisdiction: all cases come before it on appeal from some court below. It cannot change the verdict of a lower court: it must either confirm the decision or refer the case back for a new trial. But it does not, as in America, send the case back to the same court for retrial: the rehearing must be given to a different court of the same grade. Since appeals involving the same legal questions are being constantly brought before the court of cassation, this tribunal is gradually building up a body of case law despite the fact that it is not bound by its previous decisions. It should be reiterated that although the court of cassation is the court of last resort in all ordinary civil and criminal cases, it has no power to declare any law unconstitutional.

The prestige of this court is very great. A seat on its bench is the vaulting ambition of every judge and *procureur* in the lower courts of France. The procedure used in the court of cassation is quaint, having come down without much change from the great ordinances of Louis XIV. The Napoleonic code of procedure left it substantially untouched. The contending parties submit briefs in writing; then the actual pleading consists of short oral arguments on the principal issues by the chief attorneys for both sides. These legal points of disagreement are then studied by a single judge who submits his findings to the whole chamber, which may accept or modify these findings as it sees fit.

Mention ought to be made of three special tribunals which stand outside the hierarchy of regular courts but whose work is of considerable importance. The first of these are the courts of industrial arbitration (*conseils de prud'hommes*). These are semi-judicial bodies made up equally of employers and employees with a justice of the peace presiding. They settle, or try to settle, labor disputes—especially those connected with wages, conditions of work, and wrongful dismissals. Thus they afford a prompt and inexpensive means by which the worker can get redress if injustice has been done. An appeal may be taken to the regular civil tribunals in any case where the amount involved is above a certain sum.

<sup>1</sup> In the case of the 1st section on sect. (chambre de 1re section) on appeal to determine whether it is with the consent of the court. If it is decided that the appeal is to go to the other section, then the case is transferred. By this method of the 1st section is decided.



In the second place there are the commerce courts (*tribunaux de commerce*) which decide controversies arising out of commercial trans-

(b) THE actions including bankruptcy proceedings. They are  
COMMERCE established in all French cities of any considerable size.  
COURTS.

The judges are elected by the merchants of the municipality. In Paris there are about 47 000 persons qualified to participate in the election of these commercial judges. They relieve the regular courts from the task of handling a huge grist of trade disputes. Appeals from the decisions of the commerce courts go to the courts of appeal.

Finally there are special courts for the fixing of compensation when private property is taken for public use under the right of

( ) CO RTS eminent domain. These courts are composed of a jury  
O EX RO RI alone—sixteen citizens drawn for the purpose and  
ATION known as a jury of expropriation. They report their

findings to the civil court which promulgates the award. In the United States when private property is taken for public use the constitution requires that the deprived owner shall be given just compensation. The amount of this compensation in the event of disagreement is fixed by the regular courts.

In all the regular courts (not including those mentioned in the three foregoing paragraphs) the judges are appointed on recom-

THE PRE. CH mendment of the minister of justice but the latter is  
JUD CLARY AS not free to recommend whom he pleases. He must fol  
A CARE R. low certain rules which have been laid down by presi-

dential decree. As regards appointments to the lower courts the minister must make his selections from among those who have passed special examinations or who have had a certain amount of experience either as prosecutors or in some other official position. For appointments to the higher courts the recommendations must be made from among the judges of the lower courts in accordance with a table of promotions.<sup>1</sup> It is provided however that the minister may depart from the *table d'avancement* in certain cases. This sys-

<sup>1</sup> This does not apply to the *juge d'instruction* who are rarely promoted. Judges of the courts of appeal and of assize are promoted from the courts of the first instance. Judges of the court of cassation are selected from the courts of appeal.

There is a separate table of promotions for each high court. It is prepared anew every year by the minister of justice with the help of a judicial commission. It is based upon merit as well as seniority. The minister must fill the last three-fourths of the annual vacancies from this list of those remaining on. The last three-fourths of the annual vacancies from this list of those remaining on. The last three-fourths of the annual vacancies from this list of those remaining on.

tem of appointment and promotion has greatly diminished the activity of the politicians in relation to the French judiciary but it has not yet eliminated this activity altogether

Most judicial appointments in France are made without limit of time. In all the courts except the lowest and the highest the judges are presumed to hold office during good behavior or until they reach the age limit.<sup>1</sup> Any accusation of misconduct against a judge (save in the case of its own members) is heard by the court of cassation which may render a verdict of removal. But the court of cassation has itself no such legal protection its members may be removed by the President of the Republic at any time. In practice removals do not take place without good reason.

TENURE OF  
THE JUDGES

By law and by custom therefore security of judicial tenure is well established in France. But it is not guaranteed by the constitution as in the United States. There is nothing to prevent wholesale dismissals under the guise of a law for reorganizing the courts. Such purgings (*épurations*) of the judiciary have at times taken place but not in recent years (the last occasion was in 1883) and public sentiment is now so adverse to the practice that nothing of the sort is likely to occur again unless the royalists or the communists some day manage to get control of both chambers.

NO CONSTITUTIONAL  
GUARANTEE  
OF IT

### JUDICIAL PROCEDURE

The procedure in the regular courts of France differs greatly from that followed by the courts of Great Britain and the United States. To explain all the differences would lead one into a long and technical narrative of no interest save to legal specialists. But the more outstanding contrasts may be made clear by outlining how a criminal case runs its course in the French tribunals. This is not to imply that in France all criminal cases are tried in exactly the same way. The procedure is not absolutely fixed and may be varied a little as the occasion demands. But what follows will serve as a fairly typical illustration.

A SURVEY OF  
CRIMINAL  
PROCEDURE  
IN FRANCE

Let us suppose that a serious crime is committed and an arrest

<sup>1</sup> The *Juges de paix* are not regarded as judges within the meaning of this article. There are special rules prescribed by law for them. June 14, 1913. In regard to their appointment and removal. Note the rules against their inability to apply to the administrative courts (see *ibid.* pp. 559-560).

made by the police. The prisoner is first taken before an examining officer known as a *juge d'instruction*. Despite his title this functionary is not a judge at all but a preliminary inquisitor who makes no finding of innocence or guilt. He merely holds an inquiry during which he closely questions the accused person. This *enquête* is not a public hearing but the accused is permitted to have his counsel present. Witnesses are summoned and all phases of the case are gone into. Then the *juge d'instruction* puts a summary of the matter into writing and if he finds that there is sufficient ground for holding the accused he refers the case to the nearest *chambre d'accusation* which is the indicting body in France there being no grand jury system as in the United States<sup>1</sup>.

In any event the preliminary *enquête* is thorough and searching. It leaves no portion of the accused's life history unrevealed. Complaint is often made that there is too much administering of the third degree too much grilling and brow beating of the accused in the endeavor to force a confession of guilt. On the other hand there is an obvious safeguard against such maltreatment of accused persons so long as the prisoner is entitled to have his counsel present at the inquiry.

When the case comes before the chamber of accusation the latter does not hear any additional evidence but merely examines the record. It may then order the accused to be discharged or it may frame an indictment (*acte d'accusation*) against him. The actual work of drawing this document is done by the prosecuting officers of the court. Unlike the indictments returned by an American grand jury the *acte d'accusation* is not a carefully worded enumeration of the charges against the accused person but a voluminous recital which may (and often does) include a vitriolic tirade against him his general character his past misdeeds and even the bad reputations of his relatives. It sounds like a prosecuting attorney's concluding address to an American jury in a criminal trial.

Yet no one should conclude from this procedure that innocent persons run a greater risk of indictment in France than in the United States. Quite the contrary. In the United States the power to indict rests ostensibly with the grand jury a body of laymen chosen by lot but they are quite sus-

<sup>1</sup> It will be recalled that the *chambre d'accusation* (to give it its full title the *chambre d'accusation*) is one of the sections of a court of appeal.

bench This phase of judicial procedure has been vigorously criticized in recent years and there is a widespread demand that it be abolished. Police officers complain that when a judge grills an accused person too severely during his interrogatory the latter gets the jury's sympathy to such a degree that he is sometimes acquitted in the face of the strongest evidence.

After the presiding judge has finished his attempt to get the facts from the prisoner the witnesses are called. Usually the witnesses for the prosecution are called first, then those for the civil party<sup>1</sup> (if there is one) and finally those for the defense. This is the order laid down in the code of criminal procedure but it is sometimes varied and the witnesses are called in irregular order so that the jury may not know which side they are testifying for.

The examination of the witnesses is conducted in a way quite different from that to which we are accustomed in the United States.

Each witness on being sworn is instructed to tell all he knows and most of them obey this instruction all too literally. The code expressly provides that a witness must not be interrupted but the court of cassation has ruled that if he rambles too far from the case the presiding judge may call him to order. In a French court witnesses are *heard* not *questioned*. So every thing goes as evidence at a French assize—hearsay, rumors, opinion, suspicion, animosity, invective anything that a witness chooses to pour forth. He may tell what he saw what somebody else saw what he heard or what somebody else heard somebody say he saw. Accordingly there are no long wrangles between the attorneys as to whether certain evidence is admissible or not. Anything is admissible if the presiding judge cares to listen to it, for the code provides that he may admit whatever in his opinion will conduce to the ascertainment of the truth.

Then when the witness has had his say (without interruption) the presiding judge may question him. This he usually proceeds to do.

The term "civil party" requires a word of explanation. In France anyone who has been injured in person or in property as the result of a crime may enter the case as a *civil party*. For example, a truck driven by a drunken driver collides with a taxicab and kills a passenger therein. The truck driver is indicted and the state prosecutes. These are the two parties to the criminal side of the case. But the owner of the demolished taxicab may enter as *civil party* claiming damages. In the United States he would have to enter a separate civil suit which would be tried independently.

without first giving the lawyers a chance. When the judge has finished with the witness he must permit the public prosecutor to ask questions directly, but the counsel for the defense, and for the civil party if there is one, are never allowed to examine or to cross-examine in this way. They must ask their questions through the presiding judge, and the latter may decline to put any question that he deems irrelevant. Needless to say this arrangement greatly abbreviates the time taken in the examination of witnesses by counsel. Jurors are also allowed to ask questions, but they rarely do so. Nor is it usual for the two associate judges to question the witnesses, although they have that privilege.

THE CROSS-  
EXAMINATION

When the witnesses have all testified the public prosecutor delivers his address to the court and calls for a verdict of conviction. The counsel for the civil party and for the defense follow him in the order named. The prosecutor may then speak in rebuttal, if so the counsel for the defense must be given the final word. The code expressly requires this, and it naturally gives the accused an advantage. As a rule the concluding addresses are not lengthy. The presiding judge does not charge the jury, as in America; he does not sum up the case and call attention to the real points at issue. Nor does he instruct the jurors that they must bring in a simple verdict of guilty or not guilty. On the contrary he submits to the jurymen a list of questions which they are to answer. Was the accused present when the crime was committed? Has his alibi been proved? Was the assault or homicide committed in self-defense? And so on. One of the questions he always asks the jurymen is whether in the event of their finding the defendant culpable there were any extenuating circumstances. Sometimes the list of questions is long and complicated, and for this reason the answers which the jurors give are occasionally inconsistent with one another.

THE ORDER  
OF ADDRESS  
COUNSEL

LIST OF  
QUESTIONS  
TO  
THE JURY

The jury retires from the court room and frames its answers by majority vote, a secret ballot being taken on each question. When any matter requiring the advice of the presiding judge arises it is not the practice (as in America) to march the jury back into the court room; here the judge

HE GIVES  
THE ANSWER

gives his explanation in public. In a French assize court the presiding judge goes to the jury room, accompanied by the public prosecutor and the counsel for the accused. Not infrequently he is summoned for the purpose of telling the jurors what penalty the court is likely to

impose in case the answers are adverse to the defendant. This shows that French jurors have not caught the spirit of the jury system. They desire to do more than serve as an agency for the determination of the facts. The code of criminal procedure in France stipulates that a jury has nothing to do with penalties but French jurymen often insist upon influencing penalties in a roundabout way. They do not like to place anyone in jeopardy without a prior assurance that the punishment will fit the crime.

On the basis of the jury's answers the three judges announce the verdict and impose the sentence. In case of disagreement among themselves the three judges decide by majority vote. In general they must act in accord with the jury's answers but (as has been mentioned) if the jury votes six to six or seven to five on any question the three judges are free to frame a verdict of acquittal (but not a verdict of conviction) provided they are themselves unanimous. The code of criminal procedure also stipulates that a lenient sentence must be imposed whenever the jurymen report that they have found extenuating circumstances. French juries are notoriously partial to defendants. They are inclined to deal leniently with offenses of a political character, crimes committed during labor troubles, and most of the *passionnel* offenses. This leniency however is more evident in Paris and the other large cities than in the rural districts.

From the verdict and sentence at the assizes an appeal may be taken on any issue of law to the court of cassation. This court under ordinary circumstances has no power to set aside the verdict; it can merely order a new trial and this re-hearing takes place in some court of assize other than the one in which the original trial was conducted. In certain exceptional cases however the court of cassation may set aside the verdict of the assize without ordering a new trial.<sup>1</sup>

Thus a criminal trial in a French court is an investigation, not a contest. It is not a battle between two opposing platoons of learned counsel. The rule that questions must be asked through the mouth of the presiding judge has had the effect of discouraging frivolous inquiries on the part of the defendant's attorneys. The practice of giving the presiding judge full discretion as to the range of admissible evidence

For example, it did this in one case where a defendant had been charged with murder and subsequently appeared that the proposed testimony was wholly irrelevant.

FUNCTIONS OF  
THE JUDGES.

APPEALS

MERITS OF  
THE  
CRIMINAL  
PROCEDURE.

serves to eliminate most of the long wrangles and protests and exceptions which take place in the criminal courts of the United States. The requirement of a majority instead of unanimity in reaching a jury's decision on any point has the advantage of avoiding deadlocks. Furthermore there is a good deal to be said for the French plan of submitting to the jury a series of definite questions as contrasted with the American practice of insisting upon a categorical verdict for it gives the jurymen something specific to work upon. In America we say that juries determine questions of fact alone but what we actually require them to do is to fix guilt or innocence which is by no means the same thing.

On the other hand there are some features of French criminal procedure which are wholly out of consonance with Anglo Saxon legal traditions and would not be tolerated by public opinion in the United States or in England. A prisoner may be required to give evidence against himself. A witness is not permitted to refrain from answering any question on the ground that his answer may be self incriminating. A prisoner cannot demand to be confronted by the witness against him. Written evidence may be received and accepted against an accused person without giving him an opportunity to cross examine the authors of such evidence. The custom of admitting hearsay is one that ought not to be tolerated in any judicial system nor should the practice of letting the jury ask the judge about the probable penalty.

The procedure in civil cases is necessarily different from all this because juries are not used to such controversies nor is there a public prosecutor. Much of the evidence is submitted in writing. The *avoués* or lawyers on each side present their arguments to the judges who sit *en banc* and the latter give judgment by majority vote. Civil trials move more rapidly in France than in the United States. Less heed is paid to technicalities. The right of appeal is more restricted. Yet the French judicial system has not found much favor among English or American jurists which is partly because so few of them understand it.

SOM  
O VIOUS  
D FECTS

CIVIL  
ROC DURE

A volume in the Modern Legal Philosophy Series entitled *Modern French Legal Philosophy* by A. Fouille and others (New York 1916) gives the student a good deal of the French legal system in general. A more elaborate study is included in John Brissaud *History of French Private Law* (London 1912). Mention should likewise be made of J. Parker *Some Aspects of French Law*.

(New York 1928) Sir Maurice S. Amos and F. P. Walton *Introduction to French Law* (Oxford 1935) and R. C. K. Ensor *Courts and Judges in France Germany and England* (Oxford 1933) *The American Law Review* (Vol. XLVI *passim*) contains an interesting comparison of French and American judicial methods. Developments of the legal system in France may be followed in the *Revue générale du droit*. There is a full bibliography in the *Guide to the Law and Legal Literature of France* published by the Library of Congress (Washington 1931).



## CHAPTER XXX

### ADMINISTRATIVE JURISPRUDENCE

The French system of administrative law and the principles on which it rests quite known to English and American judges and lawyers — *liberty*  
*V. D. J.*

In addition to the legal system which has just been described France has another body of law and a separate set of courts for administering it. This branch of jurisprudence is known as administrative law (*droit administratif*) and the tribunaux which deal with it are called administrative courts. The ordinary laws and the regular courts are concerned with the administration of justice as between man and man while administrative law is concerned with the adjudication of rights as between the citizen and the government.

A SPECIAL  
 BRANCH OF  
 JURISPRUDENCE

How did this distinction arise and what is the basis on which it rests? Well to begin with it harks back to the ancient legal maxim that the king can do no wrong. This principle or something akin to it is still recognized in all countries — France Great Britain and America alike. The sovereign is the source of law being the source of law he is above the law hence he cannot wrong his subjects and is not liable to be sued by them. This doctrine was succinctly stated by Chief Justice Roger B. Taney of the United States Supreme Court in one of his decisions as follows:

THE BASIS OF  
 ADMINISTRATIVE LAW

It is an established principle of jurisprudence in all civilized nations that the sovereign cannot be sued in its own courts or in any other with out its consent and permission but it may if it thinks proper waive this privilege and permit itself to be made a defendant in a suit by individuals.

Now while this principle is a time honored one it continues to be recognized today because it embodies a sound maxim of public

policy To follow a different rule would be dangerous The public service would be hindered and the public safety menaced if the sovereign authority could be enjoined from action by any citizen at any time Neither the United States therefore nor any state of the Union can be sued by an individual without its own consent

Yet the fact remains that the nation and the states must exercise their sovereign authority through human agencies—through public

officials who are elected or appointed to do the work of governing And these officials being human will at times make mistakes display negligence exceed their authority act arbitrarily and do injury to citizens or

their property A strict adherence to the principle that the king can do no wrong would lead to frequent and grave injustice It would mean that the citizen must suffer wrong without redress For this reason all sovereign states do in fact assume a varying amount of legal liability and permit themselves or their public officials to be sued under certain prescribed conditions

Then the question arises How can this legal liability be safely assumed by the government? Should citizens be permitted to sue the state (or its officials acting under its authority) in the regular courts or should special courts be provided for this purpose? Should the suit be brought under the general laws of the land or in accordance with special rules established for controversies of this character?

England and America have answered these questions in one way France and other Continental European countries have answered them differently Their answers in both cases go back to the fundamentals of their respective legal systems The common law upon which the jurisprudence of England and America rests has always been intolerant of special privilege—especially on the part of those who are the agents of the government It places upon the public official be he governor mayor policeman or inspector the burden of proof that all his actions are fully warranted by law No employee of the government in England or the United States enjoys immunity from the jurisdiction of the regular courts by mere reason of the fact that he performs a public service or wears a uniform

But the Roman law upon which Continental European juris

prudence is largely based came at the matter from a different angle. It regarded the state as an end in itself and the individual as only a means to the perfection of the great body politic.<sup>1</sup> Hence it always stood ready to sacrifice the interest of the individual if the well being of the state so demanded. *Salus populi est suprema lex*. From this it naturally followed that those who served the state in an official capacity were entitled to special consideration. In other words they should be subject to a special body of law and amenable only to a special system of courts.

THE ANSWER  
GIVEN BY  
ROMAN LAW

In England or in America if an individual feels aggrieved at the action of a public officer he betakes himself to the ordinary courts for a warrant of arrest or writ of mandamus or an injunction or whatever the appropriate remedy may be. He may ask for an injunction to prevent the paving of a street the awarding of a contract or the levying of a tax. He may get a writ of mandate ordering the election board to put his name on the voters list or directing the building commissioner to issue him a permit. If his property is taken for public use and he cannot get just compensation any other way he goes right into the ordinary courts with his claim against the public authorities. There his claim will be adjudicated by a jury of his fellow citizens. All this is in conformity with the Anglo-Saxon legal principle that all officials save the very highest (and with certain exceptions which will be presently noted) are subject to the ordinary laws of the land. The highest officials in turn are subject to impeachment.

OFFICIAL  
LIABILITY IN  
ENGLAND AND  
IN AMERICA

QUALITY  
OF THE  
LAW

This point may be said to have been decided in an extramural way by the Fascist government of Italy today. See below Chapt. XXXVIII.

Joseph Barthélemy in his *Gouvernement et Finances* (Paris 1919) argues that the system of administrative law was largely a spontaneous result of the French Revolution. The revolutionary tribunals say had to make its own provisions and the judges of the regular courts tried to protect their interests when the government officials tried to put their hands against them. They were forced to interfere with administrative acts. The original idea was that the revolutionary principle of popular sovereignty was not to be applied to the rules.

But the parliamentaries of the great upheaval of 1789. It was a logical outcome of the features which characterized the English Revolution, namely the weakness of the courts and the overpowering strength of a centralized administration. Writing of the French judicial situation before 1789 Alexis de Tocqueville says that the country was controlled by administrative tribunals. If France had possessed a system of administrative law as in England which would be strongly entrenched it is probable that the system of administrative law and courts would have remained at a low

Both in England and in the United States however a public official is permitted to show that the wrong was not wilful but occurred in the reasonable exercise of discretion given by law in which case he is not held liable. And it should also be mentioned that there are in the United States certain special courts and commissions (like the court of claims at Washington) which exist for the purpose of adjudicating claims brought by private individuals against the government.<sup>1</sup> But neither in England nor in the United States do the rules relating to suits against the state or its public officials form a separate branch of jurisprudence. Nor do the special courts and commissions make up a system of administrative tribunals distinct from the regular judiciary. The court of claims at Washington and the court of customs appeal are integral parts of the American judicial system.

But in France and in other countries of Continental Europe all public officials of whatever rank are given a special status at law. For acts performed under color of their official duties they are not amenable to the ordinary laws of the land nor may they be brought before the regular courts. If an individual believes himself to have been wronged by any official's bad judgment or arbitrary action he is entitled to seek redress but he must seek it from special tribunals which are maintained for this purpose and which apply a special set of administrative rules.

It should be made clear however that this immunity of public officials from the jurisdiction of the regular courts does not extend to anything done by them in a personal or non official capacity. It does not even extend to acts performed in an official capacity if the injury results from the personal fault or personal negligence of the public officer. If for example a policeman makes an arrest in the course of his duty and in accordance with his instructions he cannot be sued in the ordinary courts no matter how wrongful the arrest may be but if he makes an arrest without color of right and in disregard of his instructions he may be dealt with like any private individual who lays himself open to a civil suit for assault.

As has been mentioned in a previous chapter the French has recently been a notable growth of administrative jurisprudence in the United States.

This division of jurisdiction between the regular and the administrative courts in France has existed for more than a century and is regarded as essential to the proper functioning of the government. No intelligent Frenchman would now suggest its abolition. At first glance the division seems to give the public officials a privileged position and hence to be undemocratic. But a moment's reflection will bring to mind the fact that even in democratic America we accord to hundreds of public officials special privileges in the eyes of the law.

IS THE SPECIAL  
PRIVILEGE OF  
THE PUBLIC  
OFFICIAL UN-  
DER DEMOCRATIC

To take a single illustration the Constitution of the United States provides that members of Congress shall in all cases except treason, felony and breach of the peace be privileged from arrest during their attendance at the session and for any speech or debate in either House they shall not be questioned in any other place. The state constitutions give a similar immunity to members of the state legislatures. In other words they create a highly privileged class. If a congressman or a state legislator utters a slander on the floor of his legislative chamber he cannot be brought before the ordinary courts and penalized; he can only be disciplined if at all by the House itself. But if you or I plain citizens were to utter the selfsame words we would promptly be dealt with as common malefactors.

AN ILLU-  
STRATION

Ah yes! someone may reply these legislators are given a privileged status but it is because their work could not be properly carried on if the legislators were subject to arrest during the legislative session on charges trumped up to embarrass them. Nor could there be general freedom of debate in the legislative halls if our lawmakers were responsible to any outside authority for the accuracy of their statements on the floor. All of which is quite true. The immunity of legislators is essential to their independence and to the proper functioning of the government.

And why should not the administrative officers of the government be given a like privilege? Is not their independence equally desirable? We speak of legislation and administration as coordinate functions in government; why then should the one be accorded a protection which is not given to the other? The French system of administrative law and administrative tribunals is based upon the principle that all public officials and not legislators alone ought to be given a reasona-

AND A QUERY  
SUGGESTED  
BY IT

ble degree of immunity from the control of the ordinary laws

Administrative law in France may therefore be defined as a system of jurisprudence which on the one hand relieves public officials from amenability to the ordinary courts and on the other hand sets up a special jurisdiction to hold them accountable. It is not embodied in a code like the civil law. Some of the rules have been established by the issue of decrees but in large part they have been accumulated by the decisions of the administrative courts especially by the decisions of the council of state.<sup>1</sup> In this respect it somewhat resembles the common law which has been slowly built up in the regular courts by one decision after another.

The French system of administrative law built up in this way covers a surprisingly wide range. It deals not only with the liability of the state and its subordinate divisions for injuries done to private individuals or their property but with the rules relating to the validity of administrative decrees the methods of granting redress when public officials exceed their legal authority (*recours pour excès du pouvoir*) the awarding of damages to private individuals for injuries which result from faults of the public service the distinction between official and personal acts on the part of public officers and many kindred matters.

The whole system is well knit together and liberal in its attitude toward the individual. Frenchmen do not look upon it as a barrier to the assertion of their personal rights. On the contrary they regard it as a palladium of their liberties a protection against arbitrary governmental action. They are right in so regarding it for it gives them a protection which otherwise they would not have. It can now be said without possibility of contradiction that there is no other country in which the rights of private individuals are so well protected against the arbitrariness the abuses and the illegal conduct of the administrative authorities and where people are so sure of receiving reparation for injuries sustained on account of such conduct.<sup>2</sup>

Maurice Hauriou *La jurisprudence administrative de 1892 à 1929* (3 ls. Paris, 1931)

James W. Garner *French Administrative Law in the 21st Law Journal* Vol. XXXIII (April 1924) p. 599

## THE ADMINISTRATIVE COURTS

The principal administrative courts in France are the regional councils and the council of state. The former are a new creation and replace the old prefectural councils of which there was one in each of the eighty nine *départements* of France. Under the new arrangement there are twenty two regional councils each serving from six to seven departments. In addition the Department of the Seine because of its large population has a council of its own. Each regional council consists of a president and four councillors all of whom are appointed by the national government on recommendation of the minister of the interior.

THE ADMINISTRATIVE COURTS

1. THE REGIONAL COUNCILS

In general the regional councils hear complaints made by individuals against the actions of administrative officials. For example they deal with controversies concerning tax assessments and most of the matters which come before them are of this nature. Other questions over which they have jurisdiction are those relating to public works (especially highways) and the conduct of local elections. Complaints by the thousand come before the councils for adjudication every year.

THE JURISDICTION AND PROCEDURE

In France a distinction is made between *cassation* and *appel*. Higher courts may be asked to quash (*casser*) actions of the public authorities or to reverse decisions of the lower courts.

2. THE COUNCIL OF STATE

The council of state has a wide original jurisdiction. Likewise it has powers of cassation in some cases and appellate authority in others. Appeals from the regional councils come regularly to it, or more accurately to that branch of the council of state which acts as a superior administrative court. Appeals are frequent and they often result in a reversal of the lower decisions. The council of state is a large body made up of two elements political and non political. Controversies concerning matters of administrative law however are heard and determined by a section of the council which consists of the thirty nine non political members or *conseillers en service ordinaire* (see above p. 433). These councillors are men of high legal attainment and do their work in masterful fashion. On the roll of *conseillers* one may find the names of many eminent jurists.

The council of state in fact, occupies a place in the public esteem

and confidence of the French which is higher than that which the  
 ITS HIGH SUPREMACY COURT enjoys among the people of the United  
 PLACE AND STATES. This is because its decisions have consistently  
 PRESTIGE. guarded the rights and interests of the private citizen,  
 however humble, against encroachment by the public authorities.  
 It has deemed no cause too trivial for its attention provided some  
 right of the individual appears to have been infringed. France has  
 no bill of rights in her constitution, but the council of state has made  
 good this deficiency by constituting itself a defender of the citizen  
 against the abuse of governmental authority.

In fact it grants redress to French citizens which no American  
 could obtain from the regular courts of his own country. Time and  
 again it has held that the individual who suffers loss  
 VALUE OF THROUGH the negligence of the police is entitled to com-  
 ITS WORK. pensation from the public treasury. It has ruled that  
 persons injured through the collapse of a building owned by the gov-  
 ernment (and used for purely public purposes) must be compen-  
 sated. In a word it holds that the state must pay for whatever dam-  
 age its officers cause, through their official malfeasance or negligence,  
 just as any private employer must make good the damage done by  
 his agents within the scope of their employment.

Those who are familiar with the principles of public liability as  
 applied in the regular courts of the United States need not be told  
 FREEDOM AND that no such generosity exists in this country. An  
 AMERICAN American citizen under the rules of common law is not  
 METHODS OF liable for injuries caused to the property of its citizens  
 REDRESS TO by the negligence of policemen, firemen or health  
 THE CITIZEN officers. You can sue the policeman in the regular  
 COMPARED courts (for all the good that it will usually do you) but the courts will  
 not award you damages against the city which employs him.<sup>1</sup> In the  
 United States we take refuge behind the legal fiction that the city is  
 the agent of the state and a sovereign state can do no wrong. The  
 French method of dealing with such matters would seem to be fairer  
 to the individual whose property has been injured. For after all it is  
 better to sue in a special court, under special rules of law and get  
 redress than to have the more democratic privilege of taking your  
 grievance before the regular courts where you get nothing.

There is no way in which acts of the public authorities in France

In a few states, however, the liability of the city for damages done through  
 the negligence of its firemen has been established by statute.



can escape the surveillance of the council of state if any citizen chooses to file a complaint. And this he may do with very little trouble and expense to himself. Formalities and fees are at a minimum. All the aggrieved individual need do is to present a petition on a stamped form the cost of which is small and even this is reimbursed if he wins his case. So anybody who has a grievance relating to any act of the public authorities can have it investigated by one of the many agents whom the council employs for the purpose.

SIMPLICITY  
OF THE  
COUNCIL'S  
PROCEDURE

Of course this unwonted hospitality has its disadvantages. It gives the *Conseil d'Etat* an enormous number of grievances to investigate and its calendar sometimes becomes badly congested. Special efforts have been made to expedite business but it seems to be only a matter of time until the multiplicity of complaints will compel some change in the present arrangements either by enlarging the council or by placing some limitation upon the ease with which grievances may be laid before it.

AN O  
TTI G  
D CT O  
THIS  
SIMPLICITY

It has been mentioned that no court in France has power to declare laws unconstitutional.<sup>1</sup> But this does not apply to ordinances and decrees—even when they are issued as supplementary to the provisions of a law. Such decrees may be annulled no matter what their nature or how lofty the personage issuing them. And it has been pointed out that a large portion of what we call lawmaking authority is exercised in France by the issue of these ordinances and administrative decrees. The council of state may also annul the act on of any subordinate lawmaking body such as a general council or a municipal council if it finds such action to be outside the scope of their authority. National laws alone are exempt.

THE AN  
NU MEN  
O D RE

When the council of state invalidates a decree or ordinance it does not ordinarily award damages to anyone who has suffered injury by reason of the attempted *excès du pouvoir* but its action permits the injured person to bring an action for damages and obtain an award. In the United States no redress can be had from the courts in such cases. If an American city council for example enacts an ordinance which later proves to be beyond the scope of its charter powers the courts will invalidate the

EFFECTS OF  
AN AN  
NULMENT

<sup>1</sup> Compare *in France* and the United States in this respect. A. Blaisdel, *Le rôle juridique des lois nationales* (Paris 1928).

ordinance but they will not hold the city liable for any damages that may have been done to private property in the meantime. So here again the French citizen is better off by reason of his special system of administrative law.

It has been said that the council of state can annul any decree by whomsoever issued. But there are certain actions of the president taken on the advice of his ministers which are not held to be decrees in this sense—*actes de gouvernement*—they are called to distinguish them from ordinary presidential decrees or *reglements d'administration*. The former are deemed to be political in character, the latter administrative, but the exact line of demarcation between the two is not always clear. A presidential decree setting forth the methods of taking a census would obviously be an administrative act and hence subject to invalidation, but a decree appointing a new prime minister would be a political act and hence not open to review. The tendency of the council of state has been to broaden the category of administrative decrees until at present almost all the actions of the president are held to be included.

The council of state may invalidate decrees and ordinances on a variety of grounds. The most common among these is the annulment for *exces de pouvoir* or as we commonly express it for being ultra vires (i.e. beyond the legal authority) of the official or council issuing it. Decrees and ordinances may also be voided for what the French administrative courts call a misuse of power (*detournement de pouvoir*). In such cases the authority of the official to issue the decree is not questioned, but the manner of his exercising the authority is attacked.<sup>1</sup> Annulment may also take place for irregularity in the form of the decree, but such invalidations are now uncommon because important ordinances and decrees are sent to the council of state for scrutiny as to their form before they are promulgated.

France is a republic with a highly centralized administration. Everything as will be shown in the next chapter heads up into the form of a pyramid. If her public officials were as free from judicial

For example, where the President of the Republic dissolved a municipal council on the advice of the minister of the interior, ostensibly because it was irregularly elected, but in reality because it had quarreled with the prefect. The municipal code clearly empowers the president to issue a decree of dissolution so that there was no *détournement de pouvoir* but there was a misuse of power because the dissolution appeared to have been ordered for an arbitrary reason.

control as they are in England and America there would undoubtedly be a great deal of arbitrary action. The system of administrative law and administrative courts is intended to serve as a counterpoise to this centralization. Something of the sort is bound to develop in any country if the government extends the scope of its functions too widely and accumulates too many responsibilities. Wider functions necessitate the employment of more officials and the subordinate officials in this vast army of civil functionaries keep getting farther and farther away from the seat of power.

WHY FRANCE  
NEEDS HER  
SYSTEM OF  
ADMINISTRATIVE  
LAW AND  
COURTS

In the United States we have had a striking illustration of this during the past few years since the national government assumed the chief responsibility for bringing the country out of an economic depression and giving it a new deal. Thousands upon thousands of new governmental officers have been employed to do this work. They have been given large discretionary powers. Many of them function at long distances from the national capital and in many cases they have not scrupled to set at naught the rights of the citizen as guaranteed to him by the Constitution of the United States. They have in many instances exceeded their powers and misused their authority—often to serve political ends. The regular courts of the United States have endeavored to protect individuals and corporations against this deprivation of their liberties and property without due process of law and to some extent they have succeeded but the outcome of their success has been a demand from officialdom for more control over the highest of these courts. In France the government may some day seek to reform the council of state so that it will be less effective in its protection of civil liberties but that step does not yet appear to be in sight.

DOES AMERICA  
NEED  
SOMETHING OF  
THE SORT  
ALSO

With two sets of courts operating in the French Republic there must be at times a conflict of jurisdiction. In America there is one Supreme Court which has the last word in controversies both ordinary and administrative. In France there are two—the court of cassation which is the tribunal of last resort in all ordinary cases (both civil and criminal) and the council of state which is supreme in all administrative controversies. Neither of these two courts is superior to the other each is supreme within its own sphere.

CONFLICTS OF  
JURISDICTION  
IN FRANCE

What happens then when these two supreme tribunals disagree?

To settle such disagreements there is a court of conflicts which is now composed of nineteen members namely a president, three judges delegated by the court of cassation, three by the council of state, and twelve other persons chosen by the foregoing seven. If the two supreme courts, regular and administrative, cannot agree as to which shall have jurisdiction in any case the matter goes to this arbitral court for jurisdiction. But they do not disagree very often as is proved by the fact that the court of conflicts does not have more than a half-dozen cases to handle each year.

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Standard works on this subject are Honore Berthelemy, *Traité théorique de droit administratif* (12th edition, Paris 1930) Maurice Hauriou, *Précis de droit administratif et de droit public* (11th edition, Paris, 1927) and Gaston Jèze, *Les principes généraux du droit administratif* (3 vols. Paris, 1923-1930). The best known brief manual is the *Précis des Dalloz de droit administratif* (Paris, 1926). A book of considerable interest is Raphael Alibert, *Le caractère juridictionnel de l'administration au moyen du recours pour excès de pouvoir* (Paris, 1926). See also the volumes by Paul Duez on *La responsabilité de la puissance publique* (Paris, 1927) and by Jean Appleton entitled *Traité de la responsabilité des fonctionnaires administratifs* (Paris, 1927). A full bibliography is included in the *Guide to the Law and Legal Literature of France* published by the Library of Congress in 1931 (pp. 210-221).

Mention should be made of Stratis Andreadès, *Le caractère juridique des états modernes* (Paris, 1934). John Dickinson, *Administrative Justice and the Supremacy of Law in the United States* (Cambridge, Mass. 1927). William A. Robson, *Justice and Administrative Law* (London, 1928) and Ernst Freund, *Administrative Powers over Persons and Property* (Chicago 1928) as well as the classic chapter on administrative law in A. V. Dicey's *Law of the Constitution* which took a position on the subject which is now regarded as untenable. Leon Duguit, *Law in the Modern State* (New York, 1919) is also worth attention.

For brief but illuminating surveys the reader may be referred to the articles on Administrative Law and Administrative Courts in the *Encyclopedia of the Social Sciences*.

## CHAPTER XXXI

### LOCAL GOVERNMENT

Local institutions outlast the life of free nations. A nation may establish a system of government but without municipal institutions it cannot have the principle of liberty.—*Alfred Tacq* II

It is a commonplace of political science that governments develop greater stability in their lower than in their upper compartments. When revolutions occur they usually begin at the top and proceed to transform the national government. They may also modify government in the middle—that is, in the states or provinces, districts and cities. But rarely do they have much effect upon government at the bottom—in rural hamlets, villages and towns.

Those who desire illustrations of this phenomenon in history will find plenty of them. The English civil war, for example, although it momentarily changed England from a monarchy to a republic, made no changes in the government of the English boroughs or parishes. The American Revolution did not change the government of the New England town or the Virginia county. It takes a tremendous overturn like the French Revolution of 1789 or the Russian Revolution of 1917 to carry the process of reorganization down into the areas of local administration. Local institutions have a superior tenacity because they are usually the product of a long evolution in which they have been moulded to the needs of the people and become a part of the common life.

In France the structure of the national government has been changed many times during the past hundred and fifty years: Bourbon absolutism, First Republic, Directory, Consulate, First Empire, Restoration, Orleans Monarchy, Second Republic, Second Empire, and Third Republic—they have all functioned within this century and a half of time. But in no case did these national changes since the close of the Revolution alter the system of local government. The organization of the French department, arrondissement and

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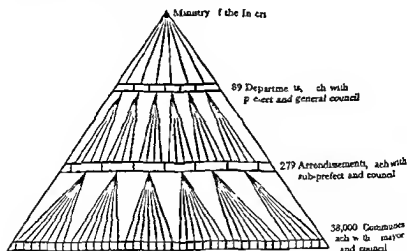
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commune remains today in all essentials just as the First Emperor left it. There have been many alterations in matters of detail of course and as a system of local administration it is much more democratic than it was at the outset. But in broad and all pervading characteristics there has been no change at all. Surely a scheme of local government which has withstood so many shocks must have a great deal of merit and vitality.

Unquestionably it has both merit and vitality. It is peculiarly suited to the needs of a country in which the national government desires to retain close control over the local authorities. Centralization is the essence of this system, centralization raised to a superlative degree. All authority converges inward and upward. It can be charted in the form of a perfect pyramid.

GENERAL  
MERITS OF  
THE FRENCH  
SYSTEM



This perfect convergence of supervision means that in France there is no recognition of the principle that every city and county has a right to conduct its own affairs in its own way. Municipal home rule has no place in French political philosophy. France is a centralized republic as respects all branches of its government. There is no division of powers between the nation and its parts. There are no concurrent spheres of governmental authority. The French Republic is not a federation of eighty-nine departments; it is a unitary state which has been mapped off into these artificial districts for the more convenient performance of governmental functions. The departments in their

NO LOCAL  
HOME RULE  
IN FRANCE

turn have been subdivided into *arrondissements* but the divisions and the subdivisions are mere creatures of the nation they have no inherent powers The minister of the interior at Paris presses a button—the prefects subprefects and mayors do the rest All the wires run to Paris

England during the nineteenth century exercised a great influence upon the development of *national* institutions throughout the world Every national government from Japan to Belgium paid homage to the English example But France to an almost equal degree has demonstrated her leadership in the field of *local* government Her scheme of prefects and subprefects has spread to the farthest corners of the earth One finds it very little changed in Portugal Belgium, Poland Holland Greece and the Balkan States With various adaptations it is functioning in the Far East in the Near East and in the countries of Latin America

Outside the English speaking countries therefore the influence of France upon systems of local administration has been far reaching and profound<sup>1</sup> Even in English speaking countries the drift is steadily toward a greater recognition of those principles on which the French system of local government rests—uniformity professionalism paternalism centralization Both England and the United States have travelled far in all four directions during the past fifty years and they are likely to keep on doing so It is appropriate therefore that students of comparative government should know something about the circumstances under which this scheme of local organization was devised and should appreciate the qualities which have given it a world wide vogue

Until after the Paris mobs stormed the Bastille on July 14 1789 there was no system of local government in France although the country was divided into provinces which had at one time enjoyed a considerable measure of political independence With the growth of the royal power the political importance of these provinces had dwindled to almost nothing The chief administrative district in France was the *generalité* over which ruled an intendant appointed by the king

INFLUENCE OF  
THE RECENT  
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SYSTEM

The two great tributaries of French local government are the *Code Civil* and the scheme of centralized local government Both, though he noted, were the work of the first Napoleon

and responsible to him alone. The monarch spoke and the intendant translated his words into action. Each intendant went about his district ordering, supervising and controlling all matters of administration: justice, police and finance. But there was no uniformity in the work of these officials: hence the character of the administration varied from one domain to another. They were all bureaucrats, however, and loyal to the interests of the king.

Within the *generalités* there were smaller administrative areas known as *communes*: more than 40 000 of them, ranging from little hamlets to large cities and towns. During the middle ages these *communes* had secured and maintained their right to self-determination, but during the sixteenth and seventeenth centuries their municipal freedom was gradually curtailed until it vanished altogether. The monarchy as it gained in strength deprived the *communes* of the right to elect their own local officers and installed royal officials in their stead. This was done by different kings, however, and under a variety of circumstances, so that there was the greatest possible diversity in the methods of communal government. No two *communes* in deed were governed exactly alike: in some of them the local offices were sold by the crown to the highest bidder; in many they were made hereditary; in others the king appointed the incumbents for short terms. In only one respect was local government uniform before the Revolution: namely, in the complete absence of popular control over any branch of it.

Now the Great Revolution changed all this in short order. First the Revolutionary assembly issued a decree which abolished the *generalités* and divided France into eighty-three departments.<sup>1</sup> It further provided for the division of each department into *arrondissements* and for the division of these again into cantons. Within each canton the *commune* was to be the smallest area of local government.

Here was a scheme of geographical divisions made with a pencil and ruler: a whole nation plotted out just as a real estate promoter would do it, disregarding all considerations of history and sentiment. Save in the case of the *communes*, all the new divisions were arbitrary creations without

<sup>1</sup> This number was increased to 89 in 1815, then reduced to 86 in 1871 and again increased to 89 in 1918.



local traditions and often without inherent unity. In all of them the commune included the government was placed by the decree of 1789 upon an elective basis. Every official—in department, arrondissement, canton, and commune alike—was to be chosen by manhood suffrage. And the central authorities were to keep their hands off. The decree made no provision for the exercise of central control from Paris. The Revolutionary assembly imagined that local democracy could be inaugurated and made to function successfully by a single stroke of the pen.

But history has proved on many occasions that you can no more give self government to a nation than you can give character to an individual. Both have got to be earned, acquired, developed, and guarded with eternal vigilance. The decree of 1789 went too far and too fast. The French people were not prepared for so great and so sudden a change. As it turned out, therefore, they did not use their new freedom in a sober and judicious way. Abuses developed on every hand: onerous taxes were imposed by the newly elected governments; public money was spent wastefully; the communes ran into debt; the local police could not maintain order or enforce the laws; and the guillotines worked overtime. These abuses were so widespread and menaced the public security in such a way that the national authorities decided to curb the local freedom and stiffen their own central control.

Thus they did in 1795 when the Revolution entered its second and more orderly stage. The principle of popular election was retained, but the local officers were brought under the supervision of Paris. A few years later, when Napoleon Bonaparte came into power, he carried the process of centralization a step farther by providing that all local officers should be appointed, not elected. Napoleon's action (1800) took out of the system most of the democracy that the Revolution had put into it. So long as he remained in power there was no more local home rule in France than there had been under the Bourbons prior to 1789. Thus did revolution produce reaction, as it always does.

From 1800 to the present time the French system of local government has been made somewhat more democratic by republics and somewhat less democratic by kings. But the centralization which Napoleon established has never been

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greatly relaxed—not even after more than sixty years of republican government. A description of French local government, written in 1875 would pass muster as tolerably accurate today. France has tried no radical experiments in this field during the intervening years.

### THE DEPARTMENTS

There are eighty nine departments in France. These areas retain the boundaries given to them in 1789 which means that they are irregular in shape size and population. A map of the French departments looks like a jig saw puzzle. Most of them are named after some river mountain or other geographical feature—thus the Department of the Saône of the Rhone of the Loire of the Gironde of the Alpes Maritimes and so forth. The Department of the Seine (which includes Paris) is the smallest in area but the largest in population. The French departments bear no resemblance to the states of the American Union. Geographically and in political status they more nearly resemble the administrative counties of England. Being arbitrary divisions they had at the outset very little self-consciousness but during the past hundred and thirty five years they have managed to develop a considerable amount of it. The department has now become a historic unit in France with some homogeneity of interest. Modern methods of communication have naturally made it in effect a much smaller division than it was in Napoleon's time.

The executive head of the department is an official known as the prefect<sup>1</sup>. He is appointed without any fixed term, by the President of the Republic on the recommendation of the minister of the interior and may be demoted transferred or removed by these higher authorities at any time. As a rule the post is filled by the promotion of some one from the lower ranks of the administrative service. But the minister may make his selections from any quarter that suits him. There are no limits on his range of choice. Technical competence is not the prime quality desired but obedience tact, and ability to carry out the policy of the government.

A prefect may be removed by the President but absolute dismissal

<sup>1</sup> This title was borrowed from ancient Rome in which there was a *præfectus* who served as the imperial right hand man.



sals are rare When the government desires to be rid of an inconvenient prefect it usually transfers him to some other post in the public service Or it puts him on the unattached list where he draws a salary but performs no prefectural duties The prefect in short is not merely an administrative officer He is a political agent of the central government and his usefulness in both capacities are matters for determination by the ministry which he serves When a new ministry comes into power there are sometimes a number of transfers

Each of the eighty nine French departments has its capital or chief town with an imposing structure known as the prefecture<sup>1</sup>

REMOVALS  
A. D  
TRANSFERS.

THE PREFECT'S  
HEAD-  
QUARTERS AND  
STAFF

Above its main doorway is emblazoned the ubiquitous *Liberte Egalite Fraternite* and from its flagstaff floats the tricolor In this building the prefect has his residence and his offices Here also are the offices of the prefectural staff which consists of the prefect's confidential assistant (*chef du cabinet*) his secretary general and various other high functionaries All are appointed by the authorities at Paris In addition there are various directors of divisions and bureaux together with a host of clerks and other employees The laws regulate the method by which all these subordinate officials are chosen and they also prescribe the technical qualifications in each case There is no spoils system as we have had it in the United States for the general qualifications are such that the ordinary political henchman cannot fulfill the legal requirements As a rule the higher positions are filled by promotion from below and although political influence counts for a good deal in determining these promotions it is by no means the chief consideration

His DUAL  
POSITION

The prefect occupies a dual position He is primarily the local agent of the central authorities at Paris he is also the executive head of his department Powers and duties accrue to him in both capacities As the agent of the central government he is responsible for the promulgation and enforcement of the national laws within his department Like wise he promulgates minor decrees (*arretes*) on his own account He has charge of the various public services insofar as they operate within his jurisdiction—main highways bridges jails poorhouses, and hospitals together with certain phases of public health and

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Th d partm nt as w ll be plain d l i has two p f ts

sanitary work, education the raising of recruits for the army the taking of the census the maintenance of public order the tobacco monopoly censorship—the list if given in full would cover a whole page On behalf of the national government he appoints a large number of officials including school teachers postmasters and postmen collectors of taxes and sanitary inspectors In the exercise of this appointing power his discretion is limited by the provisions of laws and decrees which fix the qualifications of the appointees but he has some discretion and in the exercise of it is usually influenced by the recommendations of senators and deputies

The prefect is also entrusted with the function of keeping a watchful eye on the government of the communes or towns The annual budgets of these municipalities must be submitted to him for approval he appoints some of their officers he can even suspend a mayor or a municipal council for cause<sup>1</sup> He may issue orders to the mayor of a commune on any matter connected with municipal police administration In most of this work the prefect is governed by instructions which come to him from the ministry of the interior or in some cases from one of the other ministries Sometimes these instructions are detailed and explicit in character for in matters of national concern it is desirable that all the prefects should act alike But as respects the special problems which arise from time to time in his own department the prefect is generally permitted to use his discretion If he is in doubt he gets into touch with the ministry by long distance telephone

As local agent of the national government *le Préfet* is also a politician and usually a very active one It is sometimes said that the first qualification of a good prefect is his skill as a vote getter—not for himself but for the supporters of the ministry in the Chamber At every election his hand is in evidence He has no scruples about using the extensive powers of his office and such patronage as he has for the benefit of his political friends When his own side loses the election he expects a demotion (and usually his expectations are fulfilled) when it wins he counts on a move upward—a transfer to a more important department This active participation in politics has made the prefect's position far more difficult than it would be if he were permitted to maintain a strict neutrality but prefectorial electioneering

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has become traditional in France and some writers on French government have expressed the conviction that the only practicable way to make the prefect's office non political is to abolish it altogether.

To understand this curious combination of administration and bossism it is necessary to bear in mind that Napoleon created the prefect in his own image. He desired to have in every department an underling on whom he could rely in all things. The prefects were to be the doers of his will not the keepers of his conscience. Naturally when this system was geared to a republican scheme of government it jolted considerably and it continues to jolt. For the prefect is no longer the *missus dominicus* of an emperor whose authority passes unquestioned; he is the agent of a minister whose precarious tenure of office depends on the caprice of the Chamber of Deputies.

As executive head of his department the prefect prepares all business for the general council. This body as will be indicated presently is the elective legislature of the department, but it is forbidden to deal with any matter which has not been laid before it by the prefect. The latter in this connection is more than a prime minister for he has the sole right of initiative. To the general council he submits each year a budget of proposed local expenditures and this budget is passed with such changes as the council may decide to make. But the appropriations after they are made stand wholly within the prefect's control; the council has no share in spending them.

On various other matters the general council may pass resolutions and these if they are within the law the prefect carries into effect.

But the council no more controls the prefect in France than the legislature controls the governor in the American states. In both cases it is desirable that the executive shall work in harmony with the legislative body and if the latter controls the appropriations but this does not mean that the executive occupies a dependent position. The general council cannot remove a prefect or reduce his salary or curtail his powers. When the two come into conflict, as they sometimes do, the deadlock is solved by an appeal to Paris. The President of the Republic, on the advice of the minister of the interior, has power to dissolve the general council and to order a new election. Or if the fault

seems to lie with the prefect he can transfer this official to some other department

The prefecture as an institution is one of great importance in France because the entire system of local government is clearly pivoted on it. Its technical mechanism runs with the precision of an airplane motor. Cabinets at Paris flit in and out of office; ministers abide their destined hour and go their way; but the prefects and their subordinate officers maintain the whole administration as a going concern. France might change from a republic to an empire with very little effect upon the life of the average citizen; but let the eighty-nine prefectures be abolished and the country would be in chaos within a week.

IMPORTANCE  
O THE  
PREFE T  
OFFICE

Just get yourself born in France—the saying is—and the prefect will do the rest. Yes, the prefect or his subordinates will give you a birth certificate (*acte de naissance*); they will certify you for admission to school; guard you in person; property and health; grant you permission to marry—they will even perform the civil marriage ceremony. They will tell you when your turn comes to serve in the army; count you in the census; enroll you as a voter; take care of you if you become sick or insane; and issue the burial permit when you die. Even more they will bury you; for the funerals in France are conducted by the public authorities. The prefect is the little father of his people, the central figure in this seamless web of administrative paternalism. In the person of this all-pervading functionary the shadow of the Great Corsican still hovers over every corner of the land. The bill boards everywhere are plastered with the prefect's *affiches*; his decrees which regulate all manner of things from traffic on the high ways to the price of cigarettes. Nothing seems too inconsequential for a prefect's decree. They fly from his pen like sparks from a blacksmith's anvil. He is as omnipresent as Providence—and his ways are sometimes as inscrutable.

WH T HE  
ES OR YOU

For over sixty years the Third Republic has been trying to harmonize local self-government as embodied in an elective council with rigorous centralization as it is enshrined in the prefect's office. This means that the prefect must go through gestures of deference to the public opinion of his department while actually defying it in accordance with instructions from Paris. It is small wonder that he often fails to satisfy

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either of his two masters. As a buffer between bureaucracy and the crowd the shocks come to him from both directions. The agent of the government, says Hanotaux, and the tool of a party, he is also the representative of an area which he administers. He must remain impartial, foresee difficulties and disputes, remove or mitigate them, conduct affairs easily and quickly, avoid giving offence, show the greatest discretion, prudence and reserve—and yet always be a cheerful, open and good fellow; he must be always accessible, speak freely and be neither affected nor churlish; he must pay attention to and conciliate all the opinions, interests and jealousies which rage around him.<sup>1</sup> A rather stiff set of specifications for anyone to fulfill, one would think.

### THE GENERAL COUNCIL

The general council of the department is made up of councillors who are elected by manhood suffrage for a term of six years, one half of them retiring triennially. The largest general council (with the exception of the Department of the Seine) has sixty-seven members; the smallest has only seventeen. The general council meets regularly twice a year at the chief town of the department, but may be called in special session when necessary. When the council is not in session it leaves an executive committee to exercise routine functions on its behalf. This committee is required to meet at least every month but it sits in almost continuous session.

In a broad way the general council serves as the legislative body of the department. It has much to do with the regulations relating to poor relief, public buildings, and most perplexing of all the traffic rules. But its legislative powers are narrow for three reasons: *first*, because nearly all important matters are dealt with by national decrees; *second*, because the general council is forbidden to take up any political questions (a term which has been given a very broad interpretation); and *third*, because its actions may be overruled by the central authorities at Paris. In addition, as has been pointed out, no matter can be taken up by the council except on the prefect's initiative.

<sup>1</sup> Gabriel Hanotaux, *Le régime français* (Paris 1902) pp. 129–131.

In the Department of the Seine the general council is made up of the municipal council of Paris, which has eighty members, together with twenty-one members from twenty urban arrondissements.



Of late years the general councils have been given somewhat greater liberty of action and they are now beginning to serve in a limited way as departmental parliaments

The chief function of the general council is to vote the annual budget of the department <sup>1</sup> This budget is tentatively prepared in the office of the prefect and submitted to the council at one of its regular sessions It is then discussed item by item and changes may be made in it by majority vote of the council but such changes are subject to veto by the national government When the budget has been finally approved the council figures out the amount of revenue needed Then it apportions among the various *arrondissements* the sums of money required to cover the total expenditure The council is also supposed to examine the accounts of the prefecture but this task it invariably refers to a committee With actual administration the council has nothing to do but various questions of administrative policy are submitted to it by the prefect from time to time Finally the members of the general council (as elsewhere pointed out) constitute a section of the electoral college which chooses the senators from the department <sup>2</sup>

THE DE ART  
MENTAL  
BUDGET

French writers often lay stress on the fact that the department is not a mere administrative district but an area with a corporate personality with the right to sue and be sued to hold property and to make contracts In a legislative sense that is true but it does not alter the fact that the French department does not enjoy as much home rule as an English county It has no rights that the national parliament cannot take away Its officers have no final authority It has the forms of self-determination that is all Its people elect the members of the general council but this body does not control the executive branch of departmental government The principle of executive responsibility has not been extended to local government in France as it has been in England

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A system of centralized local government can be made efficient but it is rarely popular with the people whom it serves In France the *tutelle administrative* is continually under fire Its critics are fond of quoting the old maxim

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The budget provides funds for the maintenance of the prefectures the courts houses the prisons, and other institutions for correction besides art usages and buildings

<sup>1</sup> p 460

P Laroque *La tutelle administrative* (Paris 1931)

that centralization produces apoplexy at the brain and paralysis at the extremities. They complain that it clogs the central mechanism and deadens popular interest in local affairs. As for the prefect his office is the target of a continuous fusillade, and it can hardly be otherwise so long as he is compelled to run with the hares while he hunts with the hounds. It is not improbable indeed that the prefect's office would have been abolished long ago if Frenchmen had been able to agree upon something to put in its place. During the past thirty years there have been numerous proposals to consolidate the eighty-nine geographical departments into a much smaller number of regions, each with a real legislative body and a responsible executive. Measures of this character have been repeatedly brought forward in parliament, but no one of them has as yet survived the initial stages there. Nevertheless regionalism still has vitality in France, and some day the movement may prove successful.<sup>1</sup>

To an outsider it does not seem that a mere geographical rearrangement would accomplish much. The root of the trouble does not lie in the fact that the departments are too numerous or too small. There are communities in the United States not half the size of the French departments which have a very large measure of local home rule. The trouble does not arise from the map of France but from the traditions of the French. The old regime which came to an end in 1789 was paternal and centralized in the extreme. The psychology of the people had become so habituated to paternalism and centralization that it could not be transformed overnight as the revolutionists imagined. During the past hundred years there has been some progress toward decentralization and this might well be speeded up. But there are two reasons why it cannot easily be accelerated and the first is the fact that the masses of the people in the rural districts are making no clamor for it. Their inclination is to let well enough alone. The second reason arises from the ardent desire of ministers and deputies to keep all the local patronage that they now control. Any reorganization of local government would inevitably take some of this away—and from the politician's point of view any reform that takes away patronage is an undesirable reform.

<sup>1</sup> For a full discussion see R. H. Gooch, *Regionalism in France* (New York, 1931) especially chap.

## THE ARRONDISSEMENTS

The departments as has been said are divided into arrondissements. There are now 279 of these. They do not bear designatory names like the departments but are numbered—first second third arrondissement. Each is a department in miniature with an appointive subprefect and an elective council. Of themselves the subprefects have no independent powers or almost none. They are merely the channels through which the prefect obtains information and transmits his orders—the prefect's letter boxes they are sometimes called. The chief reason for their existence may be found in the simple fact that no prefect can attend to all the details of local government. The subprefect relieves him of minor functions both administrative and political.

The subprefecture accordingly is a busy place with a considerable staff and a large amount of clerical work to be done. The subprefect is responsible for a vast amount of daily routine. In addition he spends a portion of his time in political activities. For these two hundred and seventy-nine subprefects are not only the fingers but the eyes and ears of the ministry. Every subprefect hopes for promotion and the fulfilment of this hope depends to some extent upon the success with which he can keep his district in line when a general election comes.

The council of the arrondissement has little more than nominal functions to perform. It makes no laws and votes no money. Until a few years ago it had the duty of allotting the departmental tax quotas among the communes but even this perfunctory task has now been taken away. The members of the council are ex officio entitled to sit in the electoral college of the department (which elects the senators) and the arrondissements also serve as the election districts from which members of the Chamber of Deputies are chosen. Were it not for these electoral functions they might readily be abolished. Unlike the department on the one hand and the commune on the other the French arrondissement is not a corporate entity and owns no property. It is a purely administrative unit.<sup>1</sup>

Each arrondissement is divided into cantons but the canton likewise has no corporate organization. It is merely a geographical division so that enlarged ward which serves for various electoral and judicial purposes.

## THE COMMUNES

Finally there is the commune. It is the only area of local government that antedates the Revolution. The American mind filled as it is with distinctions between townships, villages, towns, boroughs, and cities finds difficulty in grasping what a French commune really is. The French municipal code defines it as any tract of territory the precise limits of which were defined by the decree of 1789 or which has been recognized by any subsequent law or decree. As a matter of fact the term includes everything that would be called a municipal corporation in the United States—whether city, town, village, or township. A commune is any French community big or little. Marseilles is a commune, so are Lille, Bordeaux, Toulon, and Lyons, so is Chateau Thierry, so is every little hamlet in which American troops were billeted during the days of the great push through the Argonne. Some of these little communes have fewer than fifty inhabitants.

All in all there are about 38,000 communes in France. Each is governed under the provisions of the same municipal code.<sup>1</sup> This in some ways is a serious defect, for a city is a good deal more than a village writ large. Its problems differ not only in extent but in character. The French government has recognized this to some extent by providing the bigger communes with larger municipal councils and some additional administrative machinery, while holding broadly to the principle of uniformity.

The government of the commune is a relatively simple affair, as local governments go. Each commune has a municipal council of varying size, depending upon its population. The councillors are elected by manhood suffrage for a six-year term and serve without pay. In the small communes the whole council is chosen on a general ticket, but in the larger ones there is a division into wards, each of which elects a portion of the council. This municipal council is the dominating factor in local government, for it not only makes the appropriations but elects the mayor and the other officials who have the spending of the money. Some of its powers, however, are limited by the supervision of the prefect.

The best commentary on the French municipal code is Léo Mirgand's *La loi municipale* (10th edition, 2 vols., Paris, 1923).

The first duty of a newly elected municipal council is to choose a mayor (maire). This it must do from within its own membership. The mayor is chosen to hold office during the same term as the council and although serving as chief executive of the commune he continues to be a member of the council and acts as its presiding officer. There is no separation of executive from legislative functions in the French city. Invariably the mayor is a man who has already served one or more terms in the council and has become a recognized leader in his work. Sometimes the municipal campaign turns on the issue of reelecting or not reelecting the mayor.

The council of the commune also selects from within its own membership one or more adjoints or assistant mayors who hold office for six years but continue to be regular members of the council.<sup>1</sup> The mayor, the assistant mayors and the councillors all sit together and constitute the government of the commune. The only difference between the smaller and the larger municipalities is that the latter have more adjoints and bigger councils. There is no difference in the powers of the various municipal authorities or in their relations to one another. So if you describe the government of one French city, your description will serve for them all. The American student of municipal institutions need not be reminded that nothing of that sort is true in his own country.

Although the mayor of the French commune is not an independent executive officer like the American mayor, he is by no means a figurehead. He has considerably more authority than the mayor of an English borough. Between the American and the English mayor, in other words, he stands midway. The council elects him (as in England) but thereafter it cannot remove him, nor has it any direct control over his actions. Still, this lack of direct control is not a matter of much practical importance for two reasons: first, because the council does not choose a mayor unless it is reasonably certain that he will work in harmony with it, and second, because the mayor has no way of getting money unless the council gives it to him. Even the money to

In the smallest communes there is one assistant mayor. Communes of from 2,000 to 10,000 population have two; those of 3,000 have three, and so on. The largest communes have twelve, with the exception of Lyons which has seventeen. Paris, as will be seen later, has no adjoints; it has two prefects and twenty maires.

pay his own official expenses must come in that way <sup>1</sup> So although he may not be a responsible executive in the ordinary sense he is under bonds for good behavior

The French mayor like the prefect, occupies a dual position In some matters (for example in matters relating to police public health, finance the taking of the census and the application of the laws relating to military service) he is the agent of the higher authorities Decrees go from Paris to the prefects of departments from the prefects to the subprefects and from the subprefects to the mayors The mayors then promulgate them to the people When necessary the mayor issues his own local edicts supplementing these decrees The higher authorities may suspend or remove a mayor from office if he fails to carry out their instructions

On the other hand the mayor performs various functions as the chief executive of his commune In this capacity he carries out the resolutions of the municipal council He appoints the local administrative officers prepares the budget for submission to the council and tries to keep the administration of his commune running smoothly In the larger municipalities he distributes some of his responsibility among the adjoints or assistant mayors To one he gives the function of looking after the streets another takes charge of fire protection another of sanitation and so forth In this way the assistant mayors serve as titular heads of departments But they do very little real work in connection with the departments for which they are technically responsible They leave the work to the professional administrators who are paid for doing it When the mayor is absent an adjoint serves in his stead The mayor does not choose these assistants and cannot remove them but he can take an adjoint's duties away and leave him unattached

Neither mayors nor assistant mayors are professional administrators They are laymen elected by the people and then appointed by the council They receive no salaries from the municipal treasury and hence can give only a portion of their time to the public service It is true of course that the practice of reelecting adjoints gives them more familiarity

The mayor receives no regular salary but the council is permitted to give him, each year, an allowance for expenses. This allowance in the large communes is virtually equivalent to a salary

with the affairs of the commune than one customarily finds among the elective officials of American cities but they do not attempt to manage the business of the municipality upon their own knowledge. The actual work of city administration in France as in England is performed by permanent, expert officials who are appointed on the basis of qualifications prescribed by law. This does not mean that local politics play no part in such appointments or in the making of promotions. They do to a considerable extent. But no amount of political influence will avail to give any man an important post of administrative responsibility in a French city unless he has the technical qualifications which are laid down by the local civil service regulations.

Ostensibly the French city is governed by laymen in reality the administration is dominated by experts. Prominent among these is the *secrétaire de mairie* or city clerk. In the small communes he is usually the local schoolmaster in the larger ones he is a full time official who takes a large part of the mayor's responsibilities off his shoulders. Every municipal service in the larger French towns (public works, sanitation, health, and so forth) has its full staff of professionals and together they form a very efficient administrative machine. There are no loose ends in French municipal government.

The French municipal council unlike the council of an English or American city does not meet once a week or once a month. Like a legislature it holds its sessions day after day until the business is finished and then takes a long recess. As a rule there are four sessions a year each lasting from two to six weeks. Its powers according to the municipal code are of the widest extent. The council in the words of this enactment regulates by its deliberations the affairs of the commune. Nothing could be much more comprehensive than that.

But as a practical matter the authority of the council is emasculated by the necessity of obtaining the prefect's approval for many of its decisions before they become valid. In the field of municipal finance particularly this requirement operates as a great restriction upon its powers. The national government deals out authority with a generous hand but

LAYMAN AND  
EXPERT

THE WORK OF  
THE COUNCIL

THE PREFECT  
KEEPS A CLOSE  
EYE ON IT

On the workings of the civil service system in a French city (Bordeaux) see Walter R. Sharp *The French Civil Service* (New York, 1935) Chap. XI.

it cuts the cards. Broadly speaking the council takes the initiative in most matters of municipal government except finance, police, and education. It may adopt resolutions relating to various questions of municipal policy and if these are not annulled by the higher authorities, the mayor and his adjoints see that they are carried into effect. Prefects and subprefects everywhere keep a watchful eye on all the municipal authorities. But their interference is not as frequent as it used to be.

Whether by reason of this prefectural supervision or in spite of it, French cities have been well governed. They have been better governed on the average than the cities of the United States. The city's money has been honestly spent and good value has been obtained for it. The grosser forms of malfeasance and speculation which have been so common in the cities of the United States are virtually unknown in France. Contracts are fairly awarded to the lowest bidder, the spoils system has been kept in control, the officials of the various departments have been given security of tenure, and the police have remained reasonably honest. It is sometimes said that French cities are unprogressive, that they let their affairs travel in a rut and are slow to adopt new methods. There may be truth in this allegation, but it is to be remembered that French cities have been growing very slowly and hence have not had need for much re-planning or for large reconstructions in their public services. The French temperament, moreover, is not given to exuberance over anything for the mere reason that it is new.

A word should be added with reference to the government of Paris. The French capital is under a special dispensation, and there are several reasons for its being so placed. Paris is the largest city in France, five times as large as its nearest rival, Marseilles. It is the seat of the national government with an enormous amount of national property within its bounds, including legislative and executive buildings, museums, libraries, palaces, and public monuments. Paris moreover has been a troubler in Israel. It is the point from which all the revolutions and *coups d'état* have emerged. History is to a nation what memory is to man—and a burnt child dreads the fire. Although Paris has never contained more than ten per cent of the French population, the city has been responsible for at least ninety per cent of the nation's political vicissitudes. The city on the Seine is both

FRENCH CITIES  
HAVE BEEN  
WELL  
GOVERNED

THE  
GOVERNMENT  
OF PARIS.



the head and the heart of France The Third Republic takes no chances on its good behavior

Paris virtually covers a whole department the Department of the Seine and is governed as such by a prefect Unlike the other eighty eight departments however it has an additional prefect known as the prefect of police whose function is the maintenance of law and order Both prefects are appointed by the President of the Republic acting upon ministerial advice There is also a municipal council of eighty members four from each of the twenty arrondissements into which the city is divided With the addition of certain members from communes just outside the city (but within the Department of the Seine) this municipal council serves also as the general council of the department

THE TWO  
PREFECTS  
AND THE  
MUNICIPAL  
COUNCIL.

Paris therefore has no mayor in the American sense But the administrative heads of the twenty arrondissements are called mayors although they are in reality subprefects They are chosen in the same way as subprefects and have similar functions A large portion of the city's routine work is performed at the headquarters or *mairie* of each arrondissement and is not concentrated at the city hall as in American cities This attempt to combine the government of a city with that of a department has resulted in the creation of a curious hybrid There is a centralization of power and a decentralization of functions The prefect of the Seine is the dominating factor in Parisian government but like all the other prefects he is merely the agent of the ministry The city council votes the budget and it has some other important powers but it does not control the city administration

THE ARIS  
WARDS OR  
ARRONDISSE-  
MENTS

Many Parisians are dissatisfied with this arrangement and there has been a persistent clamor for a greater degree of metropolitan home rule Thus far however the clamor has availed nothing because the French parliament is made up for the most part, of senators and deputies from the rural areas and small towns who look upon the capital with suspicion Their attitude toward the City of Light continues to be a strictly bucolic one Recollections of barricades jacqueries the Red Terror and the Commune still haunt the rural French mind Paris belongs to France they say in the provinces and France must control its administration This

THE FRENCH  
CAPITAL,  
LIKE THE  
AMERICAN  
WANTS HOME  
RULE

might sound strange to American ears were it not for the fact that precisely the same doctrine is applied to Washington. The Department of the Seine is not allowed to manage its own affairs neither is the District of Columbia—but that is another story and one which does not belong in this book.

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The subject of French local government in its various phases is fully treated in all the standard works of French administration (see *above* p. 564). Léon Morgand's *La commune* (10th edition 2 vols. Paris 1923) is the most useful book on the government of the commune. There are eight chapters on French municipal government in William B. Munroe's *Government of European Cities* (revised edition New York, 1927) pp. 205-356. A full bibliography is there appended (pp. 413-423). Mention may also be made of M. Félix Petit's *droit municipal* (Paris 1926) and M. Leroy's *La ville française institutions et libertés locales* (Paris 1927).

On the government of Paris the most comprehensive book is Eugène Rauga and Maurice Félix's *Le régime administratif et financier du département de la Seine et de la ville de Paris* (Paris 1922). Albert Guerard's *L'Administration de Paris* (Paris 1929) is an interesting study.

## CHAPTER XXXII

### FRANCE AS A WORLD POWER

And threatening France plac'd like painted Jove,  
Kept idle thunder in his lifted hand

—Dryden

France like Great Britain is a world power with possessions scattered all over the globe. She is today more distinctly an imperial power than she has ever previously been even under the Bonapartes. The European territory of France covers a little more than 200 000 square miles which is less than the area of Texas. But the tricolor flies over more than a million square miles outside Europe—in Africa in Asia and in America.

The population of France herself is less than 40 000 000 but the French overseas possessions including Algeria the colonies the protectorates and the mandated territories have a combined population of almost 60 000 000. Apart from the commercial possibilities which may be available in these varied possessions this reservoir of man power is of great importance to France because it serves to counterbalance in some degree the numerical weakness of the French in Europe. The failure of her own population to grow at the rate maintained by her neighbors has given France a serious problem, especially in connection with her desire for security.

France and England as colonial powers afford some interesting analogies and some striking contrasts. Both made a belated entry into the field of colonial expansion having delayed until after Spain and Portugal had taken what then seemed to be the choicest territories in the new world. But although they began late both France and England made rapid progress. Both obtained a strong foothold in America and both undertook to get control of India. Both lost their first colonial empires in the latter half of the eighteenth century the one by conquest the other by revolution. Both began the creation of a second colonial empire.

GREATER  
FRANCE  
HER AREA.

HER  
POPULATION

FRANCE AND  
ENGLAND AS  
COLONIAL  
POWERS

THE  
ANALOGIES

and during the nineteenth century both succeeded in acquiring great tracts of territory in various regions of the globe

But the analogies are outweighed by the contrasts. The British empire of today has been built up for the most part by private initiative by the activities of traders and commercial companies. In English colonization the merchant has invariably gone ahead dragging his government after him. In French colonization on the other hand the government has assumed most of the initiative. The commercial exploiter has usually waited for his government to lead the way or at any rate, to encourage him with a subsidy. Dr Johnson sipping his seventh cup of tea once expressed astonishment that any European should go roaming in far off lands when it is so much easier to sit comfortably at home. But pioneering has been the sport of the Saxon. There is a roving strain in his blood. His neighbors across the Channel have not been moved by it in the same degree.

There are other differences. England's colonial policy has been unsteady and opportunist while that of France has been guided by a fixed and consistent purpose. England again has specialized in the middle latitudes while France has devoted most of her energies to the tropics. Her principal dependencies—Algeria, Tunis, Madagascar, Indo-China, the French Congo, Somaliland, French Guiana—are all tropical territories. It is for this reason among others that the French have not had to wrestle much with difficult problems of colonial self government and with demands for self determination. On the other hand France has given some of her outlying territories the privilege of being represented in the home parliament which Britain has not yet done. As a final difference the French are still inclined to look upon their colonies as areas of exploitation which exist primarily for the benefit of the mother country although this point of view is gradually being changed. England as regards her great dominions abandoned long ago.

Happy the land whose history is dull! It was a Frenchman who said it, but there is no tedium in the annals of his own country. No other land has its pages of history so crowded with victory and defeat, success and disaster, glory and humiliation, each following the other in quick alternation. For five centuries no other country has been so steadily involved in the turmoils of humankind. Modern history

THE  
CONTRASTS.

ATTITUDE OF  
THE TWO GOV-  
ERNMENTS

FRANCE AS  
A FACTOR  
IN WORLD  
POLITICS.

records very few international episodes with France left out. To some extent the explanation of this ceaseless activity may be found in the location of the country for France sits in the very center of Europe—a quadrilateral with a frontage on two seas. She is neither a North European nor a South European country; she is both. Six nations are on her flanks—England, Germany, Belgium, Spain, Italy, and Switzerland. No other great power has so many immediate neighbors. No other great nation accordingly has had so strong an incentive to become involved in the meshes of European diplomacy. Geography has denied France the factor of isolation which has profoundly affected the history of England, and to an even greater extent the history of the United States.

There is no race of men, moreover, like the Gallic race. Frenchmen stand together—a compact and coherent mass, the most homogeneous in Europe. Heirs to the Roman tradition, they have always believed themselves to be the salt of the earth. Their manifest destiny, they have taken for granted. Hence the policy of the nation has been more often guided by emotion and sentiment than by reason and cool calculation. Frenchmen are willing to be liked or disliked, as the rest of the world may please, but they are not willing to be ignored. A great race, none the less, and one that has contributed its full share to progress in every field. At any rate it is to racial inheritance, as well as to geography, that France owes her strong nationalism, her restless diplomatic activity, her ability to bear overwhelming disasters, and her extraordinary powers of recuperation.

THE GALIC  
RACE.

During the sixteenth century, when the various countries of Europe engaged in the great race for colonial possessions, France was the premier nation of the Continent. Her population was three times that of England. Her wealth was greater, and more widely diffused among the people. Yet the French were the last to enter the field of overseas expansion, and when they got busy all the best territories were gone. Spain and Portugal had acquired Central and South America. England had entrenched herself in India and along the Atlantic seaboard. France had to go farther north to the Gulf of St. Lawrence. Yet the French made a brave attempt to establish a Bourbon empire in the new world, and by 1750 they were in the way of succeeding. At that date France possessed the whole region north of the St. Lawrence and the Great

RISE AND ALL  
O THE FIRST  
COLONIAL  
MIRE

I IN  
AMERICA.

Lakes together with what is now the American Middle West part of the Northwest and Louisiana. The French were also striving to make good their claim to the Ohio Valley thus hemming the English colonies between the Alleghenies and the sea. Had France succeeded in this ambitious plan how different the history of the new world would have been!<sup>1</sup>

In India also the French arrived late but made rapid progress when they came. The expansion of their power in the East was so

striking indeed that they were nearly on even terms with the English when the great duel between the two nations began. For more than a decade they fought it out on three continents. At the white man's behest as Macaulay says brown men knifed one another on the coasts of Coromandel and red men scalped each other on the shores of the St. Lawrence. In the end France was the loser east and west. By the Treaty of Paris she gave up her dominion over palm and pine. Virtually her whole colonial empire passed into English hands. The date of this treaty February 10 1763 was a great day in the chronicles of the sceptered isle. Never did England sign such a peace before.

In the management of her first colonial empire France did not display a high degree of imperial statesmanship. Her policy had all the

vices of Roman expansion without the virtues. She ruled her colonies with an iron hand and gave them no vestige of local self government. Those who have read

Parkman's immortal volumes on the French in Canada need not be told that no Roman province was ever more completely delivered into the hands of publicans and sinners.<sup>1</sup> Much has been said and written about England's oppression of her American colonies during the first half of the eighteenth century but let the student of colonization place the institutions of New England and New France side by side during this period. He will find that English colonial policy with all its shortcomings and mistakes was by far the more generous and enlightened of the two.

The French took the loss of their first colonial empire philosophically. Their colonial ambitions were not abandoned but deferred—

necessarily deferred because France was on the eve of grave troubles at home. The rumblings which preceded the Revolution of 1789 could already be heard

<sup>1</sup> The most interesting book of history written by an American is Francis Parkman's *Old Regime in Canada*. It is in the holdings of every public library.

It was not until this era of chaos had been definitely ended that the French government could once more turn attention to the acquisition of colonies. Bonaparte had great plans in this direction. He hoped to conquer the whole of North Africa and make it tributary to France as it once had been to Rome. This would give him a base from which he could strike at India and wrest it from English control. His eagles would fly over mosque and temple. That is why he planned his ill-starred expedition to Egypt and fought the battle of the Pyramids. But the Bonapartist vision came to naught, as it was bound to do so long as England held control of the seas.

The Napoleonic Wars left France exhausted but still with colonial aspirations. The idea of extending the French sway over northern Africa had captivated the national imagination. Here was good territory close at hand and supposedly easy to conquer. The opportunity to make a start was presented in 1827 when the native ruler of Algiers declined to make amends for an insult to the French consul general. So his city was bombarded and when this did not bring him to terms an expedition was conveyed across the Mediterranean. In the end the whole of Algeria was subdued but only after an unexpectedly long and expensive campaign. Then the country was annexed to France.

THE SECOND  
FRENCH  
COLONIAL  
EMPIRE

ALGERIA.

This annexation virtually doubled the territories under French control for Algeria is slightly greater in area than France herself. It contains some highly fertile plains and valleys within easy access of the Mediterranean coast, together with a mountainous hinterland which has considerable mineral wealth. The total population of Algeria is now about six millions of whom only ten per cent are Europeans chiefly French and Spanish. The rest are of mixed blood for Algeria has been at various times overrun by the Phoenicians the Romans the barbarian tribes of Europe and the Mussulman Arabs, each of whom left its racial imprints. Agriculture including the raising of cattle and sheep is the chief occupation of the people and Algeria sends large quantities of foodstuffs to France. There is free trade with France both ways except in the case of a few enumerated commodities.

ITS AREA  
AND POPULATION

Algeria is regarded in a political sense as an integral part of France. Its chief executive is a governor general appointed by the President of the Republic on the recommendation of the minister of the interior. Under the supervision of this minister the governor

general has charge of the military forces and of police administration. He prepares the annual budget, which is voted by the French parliament but is kept separate from the regular national budget. The governor general of Algeria is assisted by two councils: one consultative and the other deliberative. The former is wholly appointive and has advisory functions only; the latter, known as the superior council, is made up in part of high officials and in part of councillors elected by French residents.

Algeria is divided into three departments (Algiers, Oran, and Constantine), each of which is governed by a prefect and a departmental council, much after the fashion of the eighty-nine departments in France.<sup>1</sup> But the members of the departmental councils in Algeria are not chosen by all the people. The suffrage is restricted to French citizens. This does not shut out all but Frenchmen, however, for in 1919 French citizenship was extended by law to natives above the age of twenty-five who served in the World War or who are owners of land or who can read and write. In addition to the elective members of the general councils, certain councillors are also nominated by the governor general to represent the unenfranchised natives. The departments, as in France, are divided into arrondissements and within the latter are numerous communes or municipalities.

From Algeria the French eventually spread over into the contiguous territory of Tunis, which is of historical interest as the seat of ancient Carthage. This territory was invaded and became a French protectorate in 1881. Technically it still continues to be a protectorate, although it has become to all intents a French colony. The Bey of Tunis remains the titular sovereign, but virtually all authority belongs to a French resident general who is appointed by the President of the Republic on recommendation of the French foreign office. This resident general serves as minister of foreign affairs in the Tunisian ministry. With him are ten other ministers, chiefly French officials, who serve as the heads of remaining executive departments in the protectorate. They are nominally appointed by the Bey of Tunis but in reality are chosen by the minister resident in consultation with the French foreign office. Tunis also has a parliament known as the grand council. It is made up of two sections: one

ITS GOV-  
ERNMENT

LOCAL GOVERNMENT IN ALGERIA

TUNIS.

THE GRAND COUNCIL.

A portion of the country known as the Territories of the South is not included in any of these departments but is under military rule.



representing the French and the other the natives. This grand council has authority over all items in the Tunisian budget except those designated as mandatory—for example interest on the public debt, the salary of the resident general and so forth. Tunis is not divided into departments but into regions with a French comptroller in charge of each.

On the other side of Algeria is Morocco a territory which managed to retain its independence until long after all the others had lost it. This was partly because Spain and England as well as France were casting covetous eyes upon it. MOROCCO

Each was unwilling that any other country should capture the whole prize. In 1904 however it was arranged by a series of agreements among the three nations that France should have liberty of action in Morocco in return for certain concessions to Spain on the coast and various compensations to Great Britain elsewhere. But at this stage Germany intervened with a warning that she would not recognize these arrangements and for a time the European horizon became overcast with war clouds. But a compromise was patched up and although not regarded as satisfactory to anyone it served until the close of the World War when France obtained an opportunity to settle the fate of Morocco in her own way. Germany by the Treaty of Versailles was required to surrender all that she had obtained in privileges and compensations before the war.

Morocco is now divided into three zones—Tangier (which is administered by an international commission) a Spanish zone along the Mediterranean and all the rest of the country which is a French protectorate. The French zone is by far the most extensive and embraces an area as large as

PRESENT  
GOVERNMENT  
OF MOROCCO

France herself with an estimated population of nearly six millions. This territory is still governed in the name of the sultan, who is both the civil and religious ruler of his people. But his civil authority is controlled by a French resident general. There is a ministry also under French control but as yet no representative council. The agricultural and industrial possibilities of Morocco are still unknown for the interior of the country has not yet been occupied by its new masters.

The African dependencies of France are not confined to the Mediterranean region. reckoned in square miles the French have more territory in Africa than the English. But this is because France owns the great Sahara desert—a tract of imperial vastness which has very

little value unless it can be irrigated. Other African territories owned by France are Senegal, Guinea, the Ivory Coast, Dahomey, the Niger region, and the Somali Coast, the whole with a population of about thirteen millions. The French Congo, in equatorial Africa, is a large and valuable tract bordering the Belgian Congo. By the Treaty of Versailles the French obtained mandates for a large part of two former German colonies, Togoland and the Cameroon, on the West African coast.

The island of Madagascar, on the east coast, is larger than France, although one may not realize it from a glance at the world map.

**MADAGASCAR.** The French took possession of this island nearly two hundred years ago and then abandoned it. Later they went back and declared it a French protectorate, which it remained until 1896 when it became a colony. Madagascar supports a population of nearly four millions, but the French inhabitants number only about fifteen thousand. It is ruled by a governor general, who receives his instructions from the minister of the colonies in Paris. The governor general is assisted by an advisory council, and the island is divided into provinces with French commissioners in charge.

In Asia the French have maintained a foothold for nearly three hundred years. By the Treaty of Paris (1763) they surrendered most of their holdings in India, but were permitted to keep Pondichery and a small tract along the Coromandel coast. This territory France still retains, but she has never been able to expand it. For the rest of the Indian peninsula is under British control. Further to the eastward, however, the French have built up a valuable empire in Indo-China. This is made up of five dependencies—Cochin China, Cambodia, Annam, Tonkin, and Laos—which have China to the north of them and Siam to the west. Together these dependencies have a population of about twenty millions. Cochin China is a colony; the others are still called protectorates. In partial keeping with this status, there is a governor general for the entire territory, a governor in Cochin China, and a resident general in each of the other states. The governor general is assisted by a superior council, the members of which are either *ex officio* or appointive. There is a single budget and a uniform tariff for the whole of Indo-China.

The island of Réunion, in the Indian Ocean, also belongs to France. In the Australian archipelago the island of New Caledonia

and some adjacent islands belong to her and in the South Pacific there are various French islands among which Tahiti is the best known. From the wreck of her first colonial empire France salvaged a few possessions in the new world. She still holds two small islands (St. Pierre and Miquelon) off the coast of Newfoundland which are used as the headquarters of the French fishing fleet. France also retains two islands in the Caribbean (Martinique and Guadeloupe) and holds dominion over French Guiana on the northeast coast of South America.

THE ISLANDS.

Among the mandates given to France at the close of the World War one is of special importance—the mandate for Syria. This territory includes a broad coastal strip of the old Turkish empire with a population of three millions. This population is largely of Arab origin and Arabic is the language most generally used but there are large foreign elements in the towns particularly in Damascus, Aleppo and Beirut. The land is agricultural with no great mineral resources. France maintains a small army of occupation in the country and carries on the civil administration through officials who are under control of the French foreign office.

SYRIA.

Mention has been made of the fact that some of the French colonies (not including the protectorates) have been accorded representation in the home parliament. This is a concession which England has not made to any of her dominions. The United States has given the Philippines and Puerto Rico the right to send commissioners to the House of Representatives at Washington but these insular representatives are not regular members of the House and are not privileged to vote. The senators and deputies from the French colonies have full rights of membership in their respective chambers. In addition to the representation from Algeria there are four senators and ten deputies representing the overseas possessions of France. This representation is allotted arbitrarily not on a basis of area or population. Reunion, Martinique and Guadeloupe have each one senator and two deputies. French India has one senator and one deputy. Senegal, Guiana and Cochinchina have each one deputy but no senators. The other colonies and the protectorates have no representation. Both senators and deputies are chosen by the French citizens including natives who possess certain qualifications but most of the natives take no part in the elections.

 REPRESENTATION  
 IN THE  
 COLONIES IN  
 THE FRENCH  
 PARLIAMENT

As a plan of colonial representation this arrangement is quite inadequate. It leaves some of the newer and most important colonies (notably Madagascar) without recognition. As respects the represented colonies it affords a useful channel for the presentation of their grievances and petitions but beyond this it has little value. In a Senate of over three hundred members and a Chamber of six hundred the colonial delegations form a rather diminutive bloc. Their support on any measure is hardly worth making a bid for. Moreover it has been the frequent practice of the colonies to select, as their senators and deputies Frenchmen who are already active in politics at home and who sometimes have no special knowledge of colonial conditions. There is a common impression that these colonial senators and deputies do not accurately reflect the public opinion of the colonies from which they are accredited, but merely the wishes of the French officials who dominate the colonial elections.

The minister of the colonies is the chief supervisor of French colonial affairs. He is chosen in the same way as the other French ministers, and like them is responsible to the Chambers. He has general charge of all the territories belonging to France or under French protection outside of Europe with the single exception of the territories in Northern Africa. The French colonial ministry is organized on an elaborate scale with various services and bureaux. Each bureau is concerned not with a group of colonies but with some branch of colonial activity—for example colonial finance, colonial trade or colonial police. A very large amount of routine business is handled by these various bureaux because the French, unlike the English, have not acquired the habit of leaving details to be settled by the men who are on the ground. The tendency is to centralize everything in Paris.

For various reasons the French have been less successful than the English in their role as colonizers. This is partly due to the good fortune which enabled the English by their control of the seas to take the best colonies of France away from her. But it is also because the French are not a migratory race. France has had no overpopulation, no surplus with which to people her dependencies. Moreover the Frenchman loves his native soil and well he may for there is no portion of the earth's surface more blest by nature than the tract that lies between the Rhine and the Pyrenees. Give a young Frenchman the assurance of a mod-

INADEQUACY  
OF THE PLAN

THE MINISTRY  
OF THE  
COLONIES

FRANCE AS A  
COLONIZER.

erate income and he will rarely leave France for the chance of making a fortune elsewhere. The fairly equal distribution of property among the French people moreover has deprived France of that venturesome element the penniless younger sons who have played so large a part in the upbuilding of Greater Britain. Finally something is attributable to the rigid economic policy which France has applied to her dependencies. The doctrine of the open door has produced no rhapsodies in the French colonial office. The colonies have been discouraged from entering into close commercial relations with foreign countries. France has not found it easy to supply them with sufficient capital or initiative nor has the French government been willing that other countries should do this.

The keynote of French policy towards the rest of the world is *security*. The overbearing sword rattling threatening France of Bonapartist days is no more. Here is a nation that has had enough of invasion, carnage and devastation — THE IDEAL OF  
SECURITY whose strongest desire is to be secure from any more of it. Frenchmen love their own land with more than a simple patriotism. It is the patriotism of one great family numbering forty millions with a philosophy of national life. So France will sacrifice much for the security of this sun-blessed domain. But there are limits beyond which no government of hers would dare to go. One of these is set by her overseas interests especially in Northern Africa. France like Britain is deeply concerned about the control of the Mediterranean. For her military man-power must be supplemented by troops from Algeria in time of war and such transportation might be precarious if both Italy and Spain were her enemies. Likewise France is equally concerned with Britain in keeping the Mediterranean open for communication with the east by way of Suez for she has valuable interests in Madagascar and Indo-China. These and other considerations tend to bring the French and British together. The relations of France and Russia are also traditionally close for these two countries have no serious clash of interests in any part of the world. There is no French conception of international security which does not look towards cordial relations with both Britain and Russia.

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The most recent book in the field *Stephen H. Roberts History of France*  
*Clarendon Press 1870-1922* (2 vols London 1929). Other useful volumes are  
*A. Meggle Le destin de l'Idée Française* (Paris 1928).

1922) V Beauregard *L'empire colonial de France* (Paris 1924) Albert Duchene *La politique colonial de la France* (Paris 1928) and G Hardy *Histoire de la colonisation française* (Paris, 1928)

Mention may also be made of V Picquet *Colonisation française* (Paris 1912) Albert Sarraut *Mise en valeur des colonies françaises* (Paris 1923) A. Girault, *The Colonial Policy of France* (Oxford 1917), and Constant Southworth, *The French Colonial Venture* (London 1931)

The more important laws and decrees relating to the French colonies are given in A. Mérignhac, *Precis de législation et d'économie coloniale* (Paris 1924) as well as in René Faignet *Manuel élémentaire de législation coloniale* (Paris 1924) and in Henri Mariol *Abregé de législation coloniale* (Paris 1925) *L'annuaire colonial* published in Paris gives up-to-date information and statistics

## CHAPTER XXVIII

### THE OLD EMPIRE AND ITS COLLAPSE

The old political science was mistaken when it regarded the army as nothing but the servant of diplomacy and gave it only a subordinate place in its political system.

If power within and without, is the very essence of the state, then the organization of the army must be one of the first cares of the constitution. It is the army which supports the state.—*Hastich von T. entliche*

What was generally supposed to be the strongest and most efficient government in the world went down with a crash in the first week of November 1918. The collapse so quick and complete, astounded everyone. The rest of the world looked at the broken idol and wondered why a government could have been so weak when it seemed so strong. How did the pre-war German empire manage for so many years to maintain such a show of vitality while developing internal deterioration? The answer involves some knowledge of the circumstances under which the empire came into being and of the governmental mechanism which it used.

A GREAT  
COLLAPSE  
AND ITS  
LESSONS.

The German empire which came to an end in 1918 was, as Bismarck once said, a creation of blood and iron. It was the descendant, none too direct, of the Holy Roman Empire which played such a striking part in mediæval history. This imperial institution was a strange mosaic of kingdoms, principalities, dukedoms, bishoprics and what not, stretching down the axis of Europe from the Baltic to the Mediterranean. Everyone, of course, has read the comment of Voltaire that it was neither holy nor Roman, nor an empire. It was not holy because its head was a civilian; it was not Roman but largely German and was not an empire because it possessed no imperial authority. Its principal service or disservice during the many centuries of its existence was to keep Germany and Italy from becoming unified nations.

ORIGINS  
THE HOLY  
ROMAN  
EMPIRE.

The Holy Roman Empire continued to exist, in form at least, until 1806 when Napoleon Bonaparte erased it from the political map of Europe.

Now among the various principalities which made up this wraith of a federal empire (which Germans now posthumously designate as the First Reich) was the mark or principality of Brandenburg ruled by the House of Hohenzollern

BRANDENBURG  
AND PRUSSIA

It was a small tract devoid of advantages in the way of natural resources and without access to the sea. In due course however this little principality began to grow in size and strength its name was changed to Prussia new territories were acquired and Prussia eventually became in the eighteenth century one of the leading European powers. Then came the Napoleonic Wars with a disastrous defeat for the Prussians at Jena (1806) and the subsequent overthrow of Bonapartist power with Prussian help at Waterloo.

Being among the victorious allies Prussia obtained some important territorial acquisitions at the close of the Napoleonic Wars. It

THE OLD  
GERMAN  
FEDERATION  
(1815-1867)

was likewise arranged that all the German states including both Prussia and Austria should be joined together in a league or federation. This union somewhat resembled the confederation of states which existed in

America during the ten years prior to the framing of the constitution. And like the latter it proved a failure. But the old German federation continued in existence for about fifty years when it was brought to an end by an open rupture between Austria and Prussia its two principal members. These two states went to war in 1866 and the Prussians were quickly victorious. Thereupon Prussia ousted Austria from all part in German affairs and proceeded to form a new federation under her own undivided leadership. It was intended to include all the German states except Austria in this union but this did not turn out to be practicable at the moment. Four southern states (Bavaria Baden Hesse and Wurttemberg) had to be left out.

So the North German federation was formed under Prussian sponsorship in 1867 and provided with a federal constitution. This con-

THE NORTH  
GERMAN  
FEDERATION  
(1867-1871)

stitution was largely the work of Otto von Bismarck, Prussian prime minister who is said to have dictated the first draft of it in a single afternoon. The king of Prussia became ex officio president of the federation

with Bismarck as his chancellor. But before the new order could be come well established the Franco-Prussian War of 1870 intervened. This short struggle resulted in a decisive Prussian victory whereupon the four South German states were brought into the federation. Their incoming was facilitated by the fact that during the years im-



mediately preceding the war they had joined with the northern confederation in a *Zollverein* or customs union. With these new members added the union now became the German empire (1871) but the constitution of 1867 was retained with a few minor changes.

The German empire which came into being in 1871 was made up of twenty five kingdoms, grand duchies, duchies, principalities and free cities.<sup>1</sup> Of these Prussia was by far the largest both in area and in population, being larger than the other twenty four states of the empire put together. It was not therefore a federation of equals. To use a well known metaphor it was a compact between a lion, a half dozen foxes and a score of mice. Although federal in form this Second Reich was not a true federation. Prussia governed the country with a certain amount of reluctant deference to the wishes of the other states.

THE GERMAN  
EMPIRE  
(1871-1918)

In one sense however the Second Reich was definitely federal for it had a constitution which divided the field of governmental powers between the imperial and the state authorities. And the constitution was generous in the amount of authority which it left to the various states.<sup>2</sup> The imperial authorities were given jurisdiction over such matters as foreign relations, foreign trade, the army and navy, indirect taxation and customs duties, borrowing, railroads, canals, the postal and telegraph services, currency and banking, patents and copyrights, weights and measures, the regulation of industry, censorship and so on. In addition the entire field of criminal and civil lawmaking and of judicial procedure was turned over to the imperial parliament. On the other hand the actual administration of these functions was largely (though by no means entirely) devolved upon the states and the latter were given many important independent powers.

ONE OF ITS  
ECCELLAR  
ITIES

The chief executive official of the old empire was the emperor.

There were twenty five kingdoms—Prussia, Bavaria, Saxony and Württemberg, grand duchies—Baden, Hesse, Mecklenburg, Schleswig-Holstein, Saxony-Weimar, and Oldenburg, five duchies—Brunswick, Saxe-Meiningen, Anhalt, Saxony-Coburg and Saxony-Altenburg, seven principalities—Waldeck, Lippe, Schwarzburg-Rudolstadt, Schwarzburg-Sondershausen, Reuss (elder line), Reuss (younger line), Schaumburg-Lippe and three free cities—Hamburg, Lübeck, and Bremen. In addition there was the imperial territory of Alsace-Lorraine.

Bavaria was given some special privileges in return for its support of the empire while Prussia was placed under the disability of having only seventeen votes in the Bundesrat. Upper Hesse although having a population not much less than half that of Prussia.

His title was German emperor not emperor of Germany and he occupied the imperial post by virtue of his being king of Prussia. The two titles went together. No imperial throne was set up, no imperial salary provided, no imperial palaces placed at the emperor's disposal. His salary, palaces and throne came to him as king of Prussia. As king of Prussia of course he was a royal sovereign over three fifths of the empire, hence his authority was much more extensive there than in the rest of it. As emperor he

had important executive powers in only two fields of government—national defense and foreign relations. As commander in chief he supervised the organization of the German army and navy in time of peace with absolute authority over it in time of war. Likewise he appointed the German ambassadors to other countries, gave them their instructions, received ambassadors from abroad and exercised a general supervision over all diplomatic negotiations. In this field he possessed the same powers that belong to the President of the United States. But he had a further power which the President does not possess—namely that of entering into alliances and treaties with foreign states. Thus he had the right to do without consulting either branch of the German parliament unless the treaty happened to require parliamentary legislation for carrying its provisions into effect.

It was in these two fields of government, national defense and foreign relations, that the emperor found scope for the exercise of his personal influence. In spite of a promise made to his chancellor in 1908 that he would act on the latter's advice, the emperor's initiative continued to be both direct and decisive. And it was here that William II, third of the emperors, made his most serious blunders. The collapse of the imperial power in 1918 was fundamentally due to a long succession of blunders made by him in military, naval and diplomatic policy—the domains of government in which the constitution vested him with full power.

During the years 1871–1918 Germany had three emperors. The first of these, William I, had been king of Prussia since 1860. Born in 1797, he was seventy-four years old when he assumed his new imperial post in 1871; nevertheless he held the throne until 1888.<sup>1</sup> On his death the Prussian throne (and with it the imperial title) passed to his eldest son

THE THREE  
EMPERORS  
WILLIAM  
(1871–1888)

He had the mark of perpetuity of entering Paris in 1871 after the over-

Frederick. But Frederick was seriously ill at the time of his accession and died within a few months. Thereupon Germany went under the leadership of her third kaiser who took the title of William II. In addition to being young the new emperor was known to be impulsive, ambitious and self-confident. From his accession to the outbreak of the World War he tried to make himself a dominating influence in all branches of imperial policy. In point of energy and self-reliance he was not inferior to some of his ancestors, but he lacked their shrewdness. His political views were reactionary and he openly avowed himself a monarch by divine right. In the field of diplomacy his ineptitude was phenomenal and it became more so as he grew older. When he came to the throne William II was an enigma and he has remained a good deal of a puzzle both on the throne and in exile to this day.

FREDERICK  
(1858)

WILLIAM II  
(1888-1918)

The imperial constitution of 1871-1918 made no provision for a cabinet. The statesman Bismarck, who was the author of this constitution, desired to be the emperor's sole adviser. What he wanted was a one-man cabinet. He was ready to have subordinates but not colleagues. So he provided in the constitution that there should be a chancellor appointed by the emperor to countersign the imperial orders and thereby become responsible for them—but not responsible to parliament. The constitutional responsibility of the chancellor was to the emperor alone. Students of government ought to know something about this remarkable man who rose in ten years from relative obscurity to be the author of the empire's constitution, its first chancellor and a controlling figure in its politics for nearly a score of years.

THE OFFICE  
OF CHAN-  
CELLOR.

Otto von Bismarck was born in 1815 the son of a Prussian landowner. He received a good education, entered political life while still a young man and soon attracted attention by his vigorous support of the crown. Later he secured a place in the diplomatic service and finally became Prussian minister to France. He was occupying this post when William I summoned him from Paris in 1862 and appointed him prime minister of Prussia. Thereupon he proceeded to put into practice a political philosophy which may be summed up in this way: The throw of Napoleon I at Waterloo and gain entering the city with the head of his troops in 1871 after the fall of Napoleon III.

BISMARCK,  
THE FIRST  
CHANCELLOR.

German states must be welded together into a closer union under Prussia's leadership. To accomplish this Austria must be ejected from all part in German affairs. This will mean wars and to win wars Prussia must have an all conquering army. If parliament will not help build up such an army then parliament must be sacrificed.

This objective he pursued relentlessly without a quiver of conscience although it took Prussia into three wars before it was reached. Within a period of seven years he dictated his own terms to Denmark, Austria and France. Meanwhile he drafted a constitution, organized a new confederation and transformed it into an empire. Bismarck had no scruples in dealing with his opponents and his ethical standards as applied to diplomacy left something to be desired. Hence his critics called him a Machiavelli—one to whom the end justified the means—yet Bismarck was a devoutly religious man, a fundamentalist in his beliefs and patriotism was part of his religion. One war at a time was his maxim. So he kept his wars localized. He cajoled France while he dealt with Austria. Then he humored Austria while he squared accounts with France. All the while he cultivated the friendship of Russia and scrupulously refrained from antagonizing England. He would never have let his country get into a conflict with half the world as it did in 1914.

The iron Pomeranian ceased to be chancellor of the empire and prime minister of Prussia in 1890. William II had come to the throne two years earlier. A difference of opinion arose between the two and the chancellor submitted his resignation. Much to Bismarck's surprise the resignation was promptly accepted. The ex-chancellor did not take his dismissal in good part but became a severe critic of his imperial sovereign thus creating a situation that was embarrassing to all concerned. He died in 1898 but before his death a reconciliation had taken place. After Bismarck's departure from office William II virtually became his own chancellor although various statesmen held the title and performed the routine duties including the pacification of parliament.

For the constitution of 1871 made provision for a German parliament with an upper house or Bundesrat and a lower house or Reichstag. The first was assumed to represent the states and the second the people. The Bundesrat had fifty-eight members representing Prussia, Bavaria, Saxony and the other German states—not equally (as in the Senate

HIS DE  
ARTURE  
FROM  
OFFICE

THE  
IMPERIAL  
PARLIAMENT

of the United States) nor in exact ratio to population. The basis of representation was a compromise between the two. Members of the Bundesrat were appointed by the heads of their respective states for no fixed terms and could be recalled at will. They voted in accordance with instructions from home and for that reason every state-delegation in the Bundesrat always voted as a unit. Any member of the delegation could cast his state's vote; it was not essential that the other members of the delegation be present. The Bundesrat, from this point of view, was an assemblage of ambassadors rather than a body of senators.

1. THE  
BUNDESRAT

The Reichstag, on the other hand, was a body of nearly four hundred members elected from single member constituencies on the basis of manhood suffrage. It was supposed to have an equal share in law-making, but the Bundesrat became the dominating branch of the imperial parliament. Nearly all important bills originated there. The Reichstag moreover could be dissolved at any time by the emperor with the Bundesrat's consent, and on several occasions it was dissolved when it refused to concur with the latter on important measures of legislation. But the chief reason for the Reichstag's failure to become a powerful factor in imperial policy was the absence of any means by which it could control the executive. The chancellor was not responsible to it, nor could his subordinates be called to account by its members.

2. THE  
REICHSTAG

Having no real control over the policy of the executive, the Reichstag became a chamber of echoes. It received bills from the Bundesrat, went through the gesture of referring them to committees, debated them, amended and compromised when it could, and in the end gave its assent. When it proved obdurate on any important measure, a threat of dissolution could be used to mellow its attitude. No single political party ever managed to obtain a clear majority in the Reichstag, and the chancellors were able to play off one faction against another. Yet the old Reichstag had all the externals of a democratic chamber. Its members were chosen by manhood suffrage and no law could be enacted without their consent. But its activities were largely negative and it failed to exemplify the principle of popular sovereignty.

A CHAMBER  
OF ECHOES

Germany, as Bismarck once said, owed more to her armies than to her parliaments. The first chancellor gave up the helm in 1890, but his maxims of politics did not depart with him. Ballot, are

yours but bullets are mine said William II to his people after Bismarck had gone. The army and navy continued to be the first care of the imperial authorities. The task of bringing the armed forces of the empire to the highest pitch of strength and efficiency seemed to be vastly more important than that of making ministers responsible or developing a sound political spirit among the people. War was asserted by some German philosophers to be a biological necessity and the only way of applying the law of the survival of the fittest among nations. Germany must have a place in the sun. Her only alternatives were *Weltmacht oder Niedergang* so the people were assured. The officers of her armed forces at mess drank toasts 'to the day'—when they would meet the French army on land and the British navy at sea. Thus the force complex dominated every phase of German life during the years preceding the World War.

Three reasons have dictated the outline of imperial government which has been given in the foregoing pages. In the first place as has been said the student of government should not be oblivious to the lesson that a government may be outwardly strong while it is inwardly weak. He should learn not to be deceived by the appearance of things. No matter how vigorous a government may seem to be it is insecure unless it rests upon a consciousness of consent among its people. In the second place no one can understand the government of the Third Reich as it is conducted today without some knowledge of its imperial predecessor and some appreciation of the old political psychology. For it is quite apparent that the German national temper has undergone no substantial change. The doctrine of rulership by fear and expansion by force has lost none of its strength in the Germany of today.<sup>1</sup> The old empire represented a step although not a complete one, in the unification of Germany which is now a first commandment in the decalogue of Hitlerism. Finally some of the political tenets of the old regime have been carried over into the new. The chief of state (now known as *Der Führer*) is his own chancellor as the exiled emperor virtually was during the latter portion of his reign. More attention is being given to the army than to parliaments and more faith is being

While the philosophy of force has played a large rôle in Germany it is not certain that the Germans really worship force more than other European peoples do. It may be merely that they owe more to force in the past and that, unlike some of their neighbors, they are less adept in garnishing the gospel of force with beauties.

THE MILITARY  
COMPLEX.

THE LESSON  
OF THE OLD  
RÉGIME

placed in munitions than in ministries. The Reichstag of today is merely the still further emaciated Reichstag of a quarter century ago.

The German empire of William II came to an end on November 9, 1918. During the earlier part of the war the German victories roused nation-wide enthusiasm, and in the ardor of the moment nobody gave thought to questions of executive irresponsibility or the impotence of parliament. The military leaders completely dominated the entire government until signs of war weariness began to appear and a spirit of political unrest began to manifest itself. At first the authorities undertook to silence all such mutterings with a stern hand. But it gradually became apparent that repressive tactics would not avail. In spite of glowing official reports and high-powered propaganda the restlessness among the people kept increasing. Thereupon the emperor decided that it would be wise to apply a sedative by hurrying through a revision of the constitution.

But the hour of concession had been too long delayed. The Socialists in the Reichstag would not now be satisfied with anything short of a complete change of government, and their demands found an unexpected measure of aggressive support among the people. One of President Wilson's notes (October 23, 1918) in answer to the German government's request for an armistice suggested that Germany could expect no leniency from her foes unless the old scheme of autocratic government was abandoned. Then came the great debacle. While the negotiations for an armistice were proceeding, the German fleet mutinied; the mutiny spread to the shore, and presently the disorder reached Berlin, where the government did not dare attempt its suppression. Meanwhile the emperor had taken refuge at army headquarters, leaving the chancellor in control of affairs at the capital. The latter, on November 9, 1918, announced the emperor's abdication and turned his own office over to Friedrich Ebert, a leader of the Social Democrats, who proceeded to set up a provisional republican government. The emperor thereupon fled to Holland, with the crown prince at his heels, while various other distinguished personages scurried for safety to Switzerland or Sweden. All over the country the various state dynasties toppled in quick succession. Thus Germany changed in a few days, and almost without bloodshed, from a military empire to a people's republic.

**CONSTITUTIONAL HISTORY** Of the many books which deal with German constitutional history in its earlier stages the most useful for general reference are Heinrich von Treitschke *Deutsche Geschichte im neunzehnten Jahrhundert* (translated into English by E. and C. Paul under the title *History of Germany in the Nineteenth Century* 7 vols. London 1916-1920) and H. von Sybel *Geschichte des deutschen Reiches* (also translated as *The Founding of the German Empire* 7 vols. New York, 1898). A less detailed account covering a longer period is given in Ernest Henderson *Short History of Germany* (New York 1916) in J. Holland Rose *Political History of Germany in the Nineteenth Century* (Manchester 1912) and in G. P. Gooch, *Germany* (New York 1925). Mention should be also made of Sidney B. Fay *The Rise of Brandenburg Prussia to 1786* (New York 1937) W. H. Dawson *Evolution of Modern Germany* (London 1909) and R. H. Fife *The German Empire between Two Wars* (London 1916).

**THE SECOND REICH** For the structure and workings of the imperial government during the years 1871-1918 the best source of detailed information is that in Paul Laband's *Das Staatsrecht des deutschen Reiches* (4 vols. Tübingen 1901) of which there is a translation into French but not into English. A good brief survey may be found in A. Lawrence Lowell *German Empire Governments* (Cambridge Mass. 1918). Mention should also be made of B. E. Howard *The German Empire* (New York 1906) and F. Krüger *Government and Politics of the German Empire* (New York 1915). The last named book is strongly partisan but contains a useful bibliography. An English translation of the old constitution may be found in W. F. Dodd *Modern Constitutions* (2 vols. Chicago 1908).

**BISMARCK** The most useful short biography of Bismarck is by J. W. Headlam (New York 1899) but the iron chancellor also published two volumes of *Reflections and Reminiscences* prior to his death. A third volume was withheld from publication until after the close of the World War. Mention should also be made of Emil Ludvig's *Bismarck* (New York 1929).

**THE COLLAPSE OF 1918** Good accounts of the events which preceded and accompanied the collapse of the Second Reich in 1918 are given in A. Rosenberg *The Birth of the German Republic* (New York 1931) M. Baumbach *The Fall of the Kaiser* (New York 1931) H. G. Daniels *The Rise of the German Republic* (London 1927) R. H. Lutz *The Fall of the German Empire 1918* (2 vols. Stanford University Press 1934) This last named volume contains English translations of important German documents. Mention should also be made of E. Baer *German Social Democracy during the War* (New York 1919) Miles Boutwell *And the Kaiser Abolished* (New Haven 1921) and Hans Delbrück *Government and the Will of the People* (New York 1923).



## CHAPTER XXIV

### THE REPUBLICAN INTERLUDE

But oppression by you mock persons harken off the grand problem yet remains to solve that of finding government by universal suffrage. Alas how well we have learned the lesson of that — *Thomas C. Blaisdell*

The old German government having collapsed it became necessary to create a provisional administration. Ebert the new chancellor hastily formed an emergency council of six members drawn from the two branches of the Social-  
THE NEW  
 REVOLUTIONARY  
 GOVERNMENT  
 ist party known as Social Democrats and Independent Socialists. A proclamation announced that a constitutional convention would be elected to settle the future government of the country meanwhile the council of six commissioners under Ebert's leadership was to manage affairs without a constitution. It was this provisional government that authorized the signing of the armistice.

But no sooner had hostilities ended than the council of six found itself badly divided. The three Social Democrats were content with the political revolution as an accomplished fact the  
A SCHISM IN  
 THE COUNCIL  
 three Independent Socialists regarded the work as only half completed they wanted an economic revolution also. Meanwhile as in Russia the organization of workers' and soldiers' councils went on throughout Germany and each faction in the council of six tried to get the support of these bodies. In the end the Social Democrats succeeded and the Independents thereupon withdrew from the government. Their withdrawal was the signal for Communist disorders which have ever since prevailed.

In the early days of 1919 more than four hundred delegates to a constitutional convention or constituent assembly were elected by universal suffrage in accordance with the principles of proportional representation. And in February they  
THE WEIMAR  
 ASSEMBLY  
 assembled at Weimar to frame a constitution for the new German Republic. The delegates met at Weimar for the sentimental reason that this city was associated with the real cultural

glories of the German people and for the practical reason that in Berlin their work might be interrupted by Communist demonstrations.

The delegates got to work quickly and appointed a steering committee to make the draft of a constitution. This committee was so

constituted as to give representation to the various party groups in the assembly and to the various geographical divisions of the country. Accordingly differences of political opinion soon developed among its members and many compromises were found necessary. But in the end after much trimming and touching up a lengthy document (which later became known as the Weimar constitution) was agreed upon by a majority of the convention in the summer of 1919. It went into effect at once without being submitted to a vote of the German people.<sup>1</sup>

At the outset the new constitution was regarded as reasonably satisfactory by the moderate party groups in Germany—that is, by all except the Monarchists and Nationalists at one extreme and by the Independent Socialists and Communists at the other. In many ways it was a remarkable production embodying numerous striking innovations and as such it evoked the interest of political scientists throughout the world. A long document ten times longer than the Constitution of the United States, the Weimar constitution endeavored to combine a new political philosophy with a very old one. Its framers retained from the old constitution much of its imperial mechanism while engrafting upon it various institutions of the new post-war democracy.<sup>2</sup>

For example, it continued the federal type of governmental organization. Powers were divided between the Reich and the states as during the imperial regime, but the central government was greatly strengthened.<sup>3</sup> The center of gravity was shifted from the states to the nation. The number

<sup>1</sup> The most prominent figure in the constitution and the one chiefly responsible for the initial draft of the Weimar constitution was Dr. Hugo Preuss, a Jewish professor of public law. For the later significance of this racial affiliation see below pp. 633–637. His book on the constitution, entitled *Umriss der Reichsverfassung von Weimar* (Berlin, 1924) is of much interest.

<sup>2</sup> An English translation may be found in H. L. M. Bain and Lindsay Rogers, *New Constitutions of Europe* (New York, 1922) pp. 167–212.

<sup>3</sup> The term *Reich* has usually been translated into English as *empire*. That is not a accurate translation. *Deutsches Reich* does not mean German Empire but German Commonwealth, hence the term is quite consistent with a republican form of government.

of states was reduced from twenty five to eighteen <sup>1</sup> and their powers were so greatly curtailed as to raise the question whether the Weimar constitution established a federal system in reality or only in form <sup>2</sup> At any rate the prediction was made that if the government of the Reich should ever proceed to exercise all the authority vested in it by the new constitution there would be very little left to the states And so it turned out State rights in Germany were virtually abolished before the Weimar constitution went into the discard with them

The constitution of 1919 although it did not prove to be long lived deserves to have its principal features explained here for two reasons In the first place it embodied the democratic ideology which surged over most of Europe immediately after the war It contained all the modern devices of democratic government—universal suffrage proportional representation initiative and referendum the recall ministerial responsibility and a bill of rights It marked an attempt to transform Germany at one stroke from an imperial autocracy to a democratic republic And like most ambitious enterprises of this nature it proved abortive because it went too far and too fast

In the second place the Weimar constitution deserves attention from the student of government because it is only through a study of its provisions weaknesses and workings that one can get an understanding of the stepping stones on which Hitler rose to power The Third Reich could not have been established in its present form at any rate with

WHY IT  
MIGHT STUDY

1 IT  
MODERN  
IDEOLOGY

2 ITS  
RELATION TO  
WHAT CAME  
AFTER IT

The old empire was made up of twenty five states (including the free towns) together with the imperial territory of Alsace Lorraine which was lost to France as result of the war In 1919 the two small states known as Rhenish (old line) and Reuss (young line) united into the People's State of Rhenish-Prussia. A year later even states namely Rhenish Saxony Westphalia East Prussia Saxony Schwarzburg-Rudolstadt Schwarzburg-Sonderhausen Saxony-Meiningen and Saxony-Gotha were consolidated into the public state of Thuringia. A portion of the last named state (Coburg) was joined with Bavaria This makes only five states namely Prussia Bavaria Saxony-Württemberg Baden Brunswick Oldenburg Anhalt Thuringia Hesse Mecklenburg-Schwerin Mecklenburg-Strelitz Mecklenburg-Schwerin Lippe Schaumburg-Lippe Waldeck together with the three Free Cities of Bremen Hamburg and Lübeck. These five states Austria has now been added

By the provisions of the Weimar constitution the financial powers of the Reich were so greatly widened as to deprive the states of almost their entire fiscal autonomy Presently the state railways were unified under the control of the Reich. The thought would diminish the decentralization started immediately after the war

out the various provocations which engendered nation wide discontent during the republican interlude under the Weimar constitution. This is not to imply that the weak features of this constitution were the sole inspiration of Hitlerism but it is probable that they contributed greatly to the outcome. For the constitution of 1919 provided the German people with a scheme of government under which a forceful consistent national policy proved to be impossible.

### THE WEIMAR CONSTITUTION

Under the Weimar constitution the chief executive power was vested in a president elected by direct vote of the people for a seven year term with no restrictions upon his eligibility to reelection. Friedrich Ebert who had been made provisional President was kept in office until his death in 1925. Then a presidential election was held and Field Marshal Paul von Hindenburg was chosen to the post. At the expiry of his term in 1932 he was reelected despite the fact that he was eighty five years of age and he died in office two years later. During the fifteen years of the republican interlude therefore Germany had only two presidents. Provision was made in the constitution for the recall of the President by popular vote on the initiative of a two thirds vote in the Reichstag but this provision was never used.

As for general powers the President was given an imposing list but his authority was emasculated by a qualifying provision that all his actions should require for their validity the countersignature of the chancellor or the appropriate minister. And this was followed by the stipulation that by giving such countersignature the chancellor or minister would assume responsibility to the Reichstag. Thus the constitution sought to establish the principle of ministerial responsibility as it existed in the French Republic. Incidentally in this connection it may be mentioned that the Weimar convention borrowed a good deal from France but virtually nothing at all from the United States. Many references to the American plan of republican government were made on the floor of the convention but very few of them were favorable ones.

In addition to such usual executive powers as the right to execute the laws to make appointments and to conduct foreign relations the President was given a special power which with the concurrence of the chancellor could

THE REICHSPRESIDENT

HIS GENERAL POWERS

THE EMERGENCY POWER.

enable him to deal firmly with any grave national emergency. This extraordinary power was contained in Article 48 of the constitution which provided in part as follows:

If public safety and order in the Reich are materially disturbed or endangered the President may take the necessary measures to restore them and may do this if needed be by using the armed forces.

Likewise the President was given by this same article authority to suspend various fundamental rights enumerated in the constitution. But in all cases he was required to inform the Reichstag of decrees issued by him under this emergency provision and the latter could then abrogate them.

Now the dictatorial possibilities which lurked in this provision were not fully realized by those who framed it. The intent of course was to provide the chief executive with an emergency power which would be used only in a grave national crisis involving danger to the safety of the Republic. But it did not work out that way. Almost from the outset Article 48 was utilized by the President and the ministry to disregard the regular lawmaking bodies and govern the country by the issue of executive decrees. This was done by conjuring up one emergency after another. During the six years 1919-1925 over 130 decrees were issued under the terms of Article 48 but during the six years 1925-1931 when the political situation in Germany became somewhat more stabilized fewer than twenty emergency decrees were issued. In 1930 however the Brüning ministry put through its entire financial program by decree while upon the Reichstag passed a resolution demanding abrogation. Brüning then appealed to President Hindenburg who dissolved the Reichstag and ordered a new election. In other words the Reichstag found that it could not exercise its constitutional powers without imperiling its own existence.

The experience of Germany in connection with Article 48 of the Weimar constitution provides the student of comparative government with an illuminating lesson. It demonstrates the danger of entrusting any national executive with presidential powers even for emergency use. In countries where disorders endangering the public safety are likely to arise it is obviously desirable that there shall be some competent authority to deal with such situations promptly and decisively without waiting for the tardy action of legislative bodies. But to give the chief executive a right to determine when the situation is

A SECOND  
LESSON FROM  
IT

an emergency one and to act upon his own discretion in dealing with it—that is an arrangement which embodies not only the possibilities of dictatorship but an encouragement to it. The emergency decrees of the German President were thought to be well safeguarded because their exercise required the countersignature of the chancellor but this restriction proved to be of little avail because the President could remove one chancellor and install another. And the latter could countersign the order of removal as well as his own appointment.<sup>1</sup> Likewise although the President's emergency decrees could be abrogated by action of the Reichstag the latter found itself dissolved when it attempted to enforce its power of abrogation.

At any rate the German Republic presently found itself being governed largely by one article of the constitution to the disregard of all the rest. Presidential government for the most part, replaced parliamentary government. The German courts upheld this situation as constitutional by holding that the President and his ministry were the ones to judge whether or not a serious danger to public safety and order was present.<sup>1</sup> The general intent of the Weimar constitution was to lodge the center of political gravity in the Reichstag the outcome shifted it to the executive branch of the government.

As for the ministry which supported the President in carrying on the government under the emergency clause its size was not fixed by the constitution. The President merely chose a chancellor and the chancellor in turn selected such ministers as he thought desirable. Usually there were ten or twelve of them. Each took charge of a department—finance foreign affairs defense justice economic affairs and so forth. In addition the ministry as a whole formulated the general policy of the government and presented measures to the Reichstag for adoption.

The Reichstag under the provisions of the Weimar constitution was composed of members elected for a four year term by universal suffrage under a system of proportional representation. For electoral purposes the country was divided into thirty-five districts each of which chose one member for every 60,000 votes cast within the district at the election. Thus the size of the House was not fixed until

This met with public approval because internal chaos seemed to be the only alternative. The composition of the German parliament made the obtaining of essential legislation virtually impossible.

GOVERNMENT  
PRESIDENTIAL  
DECREES.

THE  
MINISTRY

THE GERMAN  
PARLIAMENT

1 THE  
REICHSTAG

after the election had taken place. This procedure represented an innovation in electoral methods and like most novelties in the art of government proved to be unsatisfactory. Its purpose was to as are every political party however small its proportional representation in the Reichstag. What it did was to encourage the division of the voters into numerous political parties so that no single party ever obtained a majority of seats in the Reichstag.<sup>1</sup>

The system of proportional representation which was used in Germany during the republican regime was not the only feature which contributed to the relative impotence of this legislative chamber. The Reichstag's own methods of procedure were also in part, responsible. All important measures which were presented by the ministry were not only referred to committees but were considered by the members at party caucuses. Frequently two or more party groups met in joint caucus and thus was especially true of the bloc which supported the ministry for the time being. Thus it came to pass that most of the Reichstag's decisions were controlled by the action or inaction of party groups and did not eventuate from an open debate on the floor. Votes in the House were in most instances merely ratifications of what had already been decided by party combinations behind closed doors. This method of doing things facilitated political trading and had an adverse reaction upon the public mind.

ITS FAILURE  
TO FUNCTION  
SUCCESSFULLY

The Weimar constitution provided that national laws are enacted by the Reichstag. The concurrence of an upper chamber was not made necessary as in Great Britain, France and the United States. Yet there was an upper chamber established by the constitution known as the Reichsrat which was made up of ministerial delegates from the fifteen German

2. THE  
REICHSRAT

As for the detailed procedure each political party nominated a list of candidates for each district, another list of candidates for each of seventeen unions into which the districts were combined (for the purpose indicated below) and a national list for the whole country. The voters marked their preferences for lists, not for individual candidates. Then, when the ballot was counted, each district was allotted one seat for every 60,000 polled votes. If the list of the Social Democrats received 182,000 votes in any district, the first three candidates on that list were declared elected.

But that was only the first step. There would be surplus votes, or fractions of 60,000 left over. So the surplus votes for each party list in two or more districts were combined for the choice of members from the top of its union list. If, when so combined the party surplus exceeded 60,000 it obtained a member. Finally the surplus votes in all the unions were combined in the same way for the choice of members from the top of the national list.

states and free cities roughly according to population<sup>1</sup> Each of these sent one or more members of its own state ministry to represent it Thus the members of the Reichsrat were ex officio ambassadors to Berlin from their own communities It was as though Iowa were represented in the Senate of the United States by her own governor lieutenant governor and state treasurer while New York could send not only such officials but a dozen others as well The Reichsrat was intended to be a federal council representing the state governments

When a measure passed the Reichstag however it did not go to the Reichsrat for concurrence Instead it was sent directly to the President for promulgation But meanwhile the upper chamber might by resolution file objections with the ministry in which case the measure had to be referred back to the Reichstag for reconsideration If the latter declined to reconsider the President could either withhold the measure from promulgation indefinitely or submit the issue to the people for decision at an election But he was required to either promulgate it or submit the question to a referendum if the Reichstag in its reconsideration had stood its ground by a two thirds vote Thus the Reichsrat had merely a suspensive veto which could be overridden by a two thirds vote of the Reichstag with the President assenting or by the people in any case<sup>2</sup> Provision was also made for a referendum on any law (with certain specified exceptions) if a petition signed by five per cent of the qualified voters was presented asking for it

Two or three other features of government established by the con

It was provided however that every German territory however small should have at least one representative in the Reichsrat and that no matter how ever large might control more than two fifths of the membership

This curious arrangement deserved a place in the museum of discarded governmental devices. It may be more clearly explained as follows

When the Reichstag had passed a measure by majority vote and the Reichsrat had filed objections to it, the bill went back to the Reichstag and the latter might then

- (a) amend the bill to meet the objections in which case it was promulgated and became a law
- (b) disapprove the Reichsrat objections by less than a two thirds vote in which case the President could refer the issue to the people or if he failed to do this, the bill did not become a law
- (c) disapprove the Reichsrat objections by two thirds vote in which case the President was required either to promulgate the bill and thus give it effect as a law or else refer the issue to the people for their decision.



stitution of 1919 deserve to be mentioned in passing. One of these is its bill of rights. In some instances its terminology seems to have been borrowed almost literally from the Constitution of the United States—for example the provision that no ex post facto law shall be passed that private property must not be taken for public use except by authority of law<sup>1</sup> and with just compensation (*angemessene Entschädigung*). The Weimar bill of rights however went farther in some respects than the American. It forbade for example the maintenance of private schools as a substitute for public schools. It declared that the house of every German is his sanctuary and is inviolable—a Teutonic rendition of the old common law adage that an Englishman's house is his castle.

OTHER  
FEATURES OF  
THE WEIMAR  
CONSTITUTION

1. THE BILL  
OF RIGHTS.

Freedom of spirit freedom of the press freedom of emigration the equality of all Germans before the law—these and many other fundamental civil liberties were enumerated. But in many instances the heart was taken out of these constitutional guarantees by inserting the provision that exceptions may be made by law. It is not to be assumed however that the framers of the German constitution failed to appreciate the true significance of their action in this regard. They probably realized full well what they were doing when they provided that various constitutional rights might be infringed by authority of law if necessity should arise. Their idea was to enunciate certain principles which seemed to them to be worthy of observance under ordinary conditions but it was not their intention that these principles should be absolutely binding upon the national parliament in all cases whatsoever.

A second feature of the Weimar constitution was its provision for a series of workers' employers' and economic councils. Wage-earners and salaried employees were to be organized locally into workers' councils these were to choose delegates to district councils and the latter in turn were to select representatives in a national workers' council. The employers were similarly to be organized into district and national associations. Then the two were to be brought into contact through joint district councils and a national economic council. Provision was made in the constitution that when the national ministry prepared any measure of fundamental importance relating to social or economic policy it should submit the measure to the national economic council before

2. ECONOMIC  
COUNCILS.

Introducing it in the Reichstag. If the bill met with disapproval in the national economic council it might nevertheless be presented to the Reichstag and passed by that body. On the other hand the national economic council could on its own initiative prepare the draft of any such measure and submit it to the Reichstag either directly or through the ministry.

In 1920 the national economic council was organized on a provisional basis with over 300 members representing all branches of

**HOW THE COUNCIL PLAN FUNCTIONED** German economic activity. Great hopes were reposed in it by economic reformers but they were not fulfilled. During the first few years of its existence many important projects were submitted to the council by the ministry and these in turn were referred to committees for consideration. Then they were debated by the council as a whole. But after 1923 the council ceased to hold plenary sessions and the committees sent their reports to the ministry direct. Likewise fewer projects of legislation were submitted to the council and in the end its committees virtually ceased to function. With the advent of the Hitler government it became lost in the general economic reorganization.<sup>1</sup>

**REASONS FOR ITS FAILURE** The failure of this experiment with a national economic council was due to several causes. One was the fact that many members of the Reichstag obtained seats in the council thus giving it a political tinge. The council in fact soon showed itself divided into party groups and became a sort of auxiliary Reichstag with the same factional divisions. It would seem that this must inevitably be the case for you cannot eliminate politics from any policy determining body by merely calling it economic and providing that its members shall be chosen by industries rather than by districts. The determination of public policy inevitably becomes a matter of politics. Another reason may be found in the extremely difficult problems which were referred to the council by the ministers. And finally the national economic council failed to gain public confidence because it had no definite economic philosophy. On such questions as government ownership and government regulation of business it was badly divided within itself. Something may also be attributed to the fact that German public opinion during the later years of the council's existence was rapidly losing

<sup>1</sup> There is a discussion of the general subject in L. L. Lorwin *Ancient Economic Councils* (Washington, 1931) and E. Lander *Review of the Economic Councils of the Different Countries of the World* (Geneva, 1932).

confidence in deliberative bodies of any sort and was turning its favor to the principle of leadership

A third conspicuous feature of the Weimar constitution was the security which it endeavored to give to the members of the German civil service. All parties were agreed that this corps of public employees should have its continuance and its integrity safeguarded. Accordingly the constitution provided that the vested rights of public employees should be inviolable that they were not to be removed suspended or transferred except in accordance with conditions determined by law and that they were to have full liberty to organize like private employees. As it turned out this last provision was not altogether a wise one. Large and influential organizations of German public employees quickly came into existence and began to make demands on the government for higher pay and more privileges. They claimed and sometimes exercised the right to strike. When economic conditions in Germany became bad and government expenditures had to be reduced the salaries of public employees were cut and many of them were discharged. This led to widespread grumbling and much bitter criticism of the government by its own employees thus lending support to a common impression that members of the German civil service were not standing loyally by the republic. Step by step the service was drawn into politics and when the National Socialist party came into power under Hitler's leadership (1933) it was given a drastic reorganization as will later be explained.

3 THE CIVIL SERVICE.

Surveying the provisions of the Weimar constitution as a whole one may venture the suggestion that they were out of joint with the times. Germany was not quite ready for the thorough going parliamentary system which the constitution sought to establish. Some features of it, moreover were ill advised. The requirement of proportional representation in a country where there were already too many political parties rendered the smooth working of ministerial responsibility impossible. Article 48 the emergency provision embodied what proved to be a dangerous delegation of authority to the executive. When that provision was under discussion at the Weimar convention only one delegate argued strongly against it — Dr. Cohn of the Independent Socialist party. His predictions as to the probable misuse of the emergency power were fulfilled to the letter. But most of all, the constitution failed because it did not provide Germany with the strong government which she

SUMMARY

needed in order to cope with the difficult problems of the post war years. These problems one after another were of such magnitude that even the most unified government would have found great difficulty in coping with them.

#### POLITICS DURING THE REPUBLICAN ERA<sup>1</sup>

The first Reichstag election was held in 1920. At this election the Social Democrats who had been the chief party of opposition during the imperial era gained the largest number of seats about one third of the whole. But the Centrum or Catholic party also secured a sizable representation and so did the People's party which gained large support from the industrialists and business interests. Several other parties ranging from the Nationalists (or extreme conservatives) on the Right, to the Independent Socialists and Communists on the Left had varying degrees of strength in the new legislative body. The middle groups were in control and by a combination among themselves they undertook to conduct the government. But no ministry proved itself able to keep the combination intact very long. The various difficulties connected with reparations, taxation, the inflation of the currency, and the French occupation of German territory proved beyond their power to overcome. The difficulty of keeping jealous party groups combined into a bloc encouraged compromise and drifting. Several ministries went into office and out again during the first few years of the new parliamentary government.

In May 1924 a new Reichstag election took place. It had become apparent during the campaign that the middle parties especially the Social Democrats were losing their hold on the country. The Nationalists with some success were endeavoring to rouse popular resentment against the foreign policy of the government, a policy which involved compromise with the demands of the Allied powers. The Communists at the other extreme sought to capitalize the disappointment of the wage earning classes who had confidently hoped to get more out of the revolution than they were obtaining. The general expectation was that both of these

<sup>1</sup> For a more detailed survey of the period may be referred to F. Lee Benson, *Europe Since 1914* (2nd revised edition New York 1936) pp. 426-463 or S. N. Umann, *Die deutsche Partei* (Wein und Wien 1932) (Berlin 1932).

extreme wings would gain heavily at the first election of 1924 and they did gain but not so heavily as was anticipated. The middle parties retained control of a majority in the Reichstag but could no longer muster the two-thirds vote of that body which the constitution required in certain contingencies. It therefore became necessary to dicker with the Nationalists for their support, and this was done. The various measures which became essential under the so-called Dawes plan of financial rehabilitation were put through the Reichstag by means of Nationalist votes.

The May election of 1924 left the German political situation in a state of unstable equilibrium. The extremists were too strong to let the middle groups control. On the other hand they were not willing to help maintain a coalition except at a price which the Social Democrats were unwilling to pay. It soon became apparent, therefore, that another appeal to the country must take place and in December 1924 a new election was held. The result of this election did not help matters much, for although the extreme Right and the extreme Left both lost somewhat, it was not possible to form a middle coalition which could be certain of a majority in the Reichstag. Ostensibly the Center Social Democrats and Democrats included more than half the House but some members of the first named group were too conservative to be relied upon in any liberal bloc. For a time the country was left without a ministry altogether and finally the Right was given a chance to show what it could do. Early in 1925 a ministry containing four Nationalists was installed after giving assurance that they would stand by the republic.

This ministry managed to accomplish a good deal as respects the solution of foreign problems. It conducted the negotiations which led to the Locarno Pact and secured Germany's admission to the League of Nations. But these steps were resisted by the Nationalists who withdrew from the ministry and ultimately forced the rest of it to resign. Then a new ministry was constituted once again from the middle parties with both Nationalists and Social Democrats left out, but it lasted no longer than the others had done and in 1927 the Nationalists were once more taken into the cabinet. In the following year the time for a general election arrived and at this election the Social Democrats made considerable gains. It therefore became necessary to take a chancellor from the ranks of this party and he formed a ministry

2. THE  
DECEMBER  
ELECTION

THE ELECTION  
OF 1928

with the aid of the middle groups thus creating what came to be known as the Grand Coalition because five parties were represented in the ministry according to their strength in the Reichstag. High hopes were entertained for the permanence of this coalition but they were not fulfilled. The cement was too weak and failed to hold.

In 1930 the Reichstag refused to pass a measure which the chancellor regarded as essential to the financing of the government,

THE MARCH  
OF EVENTS,  
1930-1933

whereupon President Hindenburg dissolved the chamber and ordered a new election. This election once more proved indecisive but it demonstrated that the National Socialists (Nazis) with Adolf Hitler as their leader were gaining strength in the country. This stormy petrel of German politics had developed such a large following that he became the logical candidate to oppose Hindenburg when the latter stood for reelection to the presidency in 1932. The old field marshal was reelected by a safe margin but his advanced age made it improbable that he would serve out his second term. Meanwhile successive chancellors (Brüning, von Papen and Schleicher) tried to keep the wheels of government moving but without much success. Of these three Franz von Papen was President von Hindenburg's personal choice and having full presidential backing he proceeded to take strong arm measures. By emergency decree he ousted Prussia's state government, barred its members from their office rooms and made himself national commissioner for Prussia thus setting an example of rule by force which his National Socialist successors were not slow to follow. But the stroke did not avail. Viewed in retrospect it marked the real beginning of the revolution.

Two general elections within a year failed to break the deadlock, meanwhile the country was growing tired of the perpetual uncertainties. As a last resort President Hindenburg opened negotiations with Hitler. An offer of the chancellorship with various conditions attached to it was rejected. Then in January 1933 it was tendered again and accepted. This step proved to be one of far reaching consequence. It quickly led to the collapse of parliamentary government and ushered in the Third Reich.

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TEXTS OF THE WEIMAR CONSTITUTION. An English translation of the Weimar constitution by William B. Munro and Arthur N. Holcombe is published by the World Peace Foundation (Boston 1920). This translation

is also printed as an appendix in Brunet's book (see *b l w*) and in Bouton's book on the imperial abdication (see *ab ve* p 608). Somewhat different renditions may be found in H L McBain and Lindsay Rogers *The New Constitutions of Europe* (New York, 1922) pp 167-212 George Young *The New Germany* (New York, 1920) A Headlam Morley *The New Democratic Constitutions of Europe* (London 1926) as well as in the volumes by A J Zurcher and by Blachly and Oatman (see *b l w*)

**COMMENTARIES** Of commentaries on the new constitution there is an abundant supply. The most convenient for student use is Karl Pannier *Die Verfassung des deutschen Reichs vom 11 August 1919* (in Reclam's Universal Bibliothek, Leipzig 1929) but mention should also be made of G Anschütz *Die Verfassung des deutschen Reichs* (14th edition Berlin 1933) and of volumes bearing the same title by F Giese (Berlin 1931) Fritz Stier-Somlo (3rd edition Bonn 1925) and Otto Buhler (Berlin 1922). A full bibliography may be found in F F Blachly and M E Oatman *The Government and Administration of Germany* (Baltimore 1928). This volume also contains an English translation of the Weimar constitution.

Mention should also be made of Rene Brunet's *La constitution allemande du 11 août 1919* (Paris 1921) of which there is an English translation by Joseph Gollomb (New York, 1922). This book may profitably be studied side by side with Otto Meissner's *Das neue Staatsrecht des Reichs und seiner Länder* (Berlin 1923) Johannes Mattern *Principles of the Constitutional Jurisprudence of the German National Republic* (Baltimore 1928) is a useful book, with a good bibliography and so is H Quigley and R T Clark *Republican Germany* (London 1928). Julius Hübner's *Das Reichsstaatsrecht* (Berlin 1924) is a standard treatise on German constitutional law during the Weimar era and Robert Huidekops *Handbuch der Verfassung und Verwaltung des Reichs und der deutschen Länder* (24th edition Berlin 1929) is also authoritative.

**THE CONSTITUTION IN OPERATION** The practical workings of the Weimar constitution are discussed at length in H G Daniels *The Rise of the German Republic* (London 1927) Ernst Jackh, *The New Germany* (London 1927) W H Dawson *Germany under the Treaty* (New York, 1933) Philipp Scheidemann *The Making of New Germany* translated by J E Mitchell (2 vols New York, 1929) Arthur Rosenberg *Geschichte der deutschen Republik* (Karlsruhe 1931) P P Reinhold *The Economic Financial and Political State of Germany since the War* (New Haven 1928) R T Clark, *The Fall of the German Republic* (London 1935) A J Zurcher *The Experiment with Democracy Central Europe* (New York, 1933) Elmer Luehr *The New German Republic The Reich in Transition* (New York, 1929) J F Coar *The Old and the New Germany* (London 1924) W G D Roussel, *L'évolution du pouvoir exécutif en Allemagne 1919-1934* (Paris 1935) and Herbert Kraus, *The Crisis of German Democracy* (Princeton 1932).

**POLITICAL PARTIES 1918-1933** The up and downs of the political parties

during the Weimar interlude are explained in S. Neumann *Die deutsche Parteien. Wesen und Wandel nach dem Kriege* (Berlin 1932) L. Bergstrasser *Geschichte der politischen Parteien in Deutschland* (6th edition Mannheim, 1932) F. Salomon *Die deutschen Parteiprogramme* (new edition by W. Mommsen and G. Franz 3 vols. Leipzig 1931-1932) and Konrad Heiden *History of National Socialism* (New York 1935)

BIOGRAPHIES AND MEMOIRS Prince Maximilian of Baden *Memoirs* translated by W. M. Calder and C. W. H. Sutton (2 vols. New York, 1928) Friedrich Ebert, *Schriften. Aufzeichnungen. Reden* (2 vols. Dresden 1926) R. Wetterstettin and A. M. K. Watson *Biography of President von Hindenburg* (New York 1930) G. Schultze-Pfaff *Hindenburg* (New York, 1932) J. W. Wheeler Bennett *The Wooden Titan* (New York 1936) R. Olden *Seydewitz* (New York 1930) and Konrad Heiden *Hitler. A Biography* (New York 1936)



## CHAPTER XXXV

### THE THIRD REICH

We must get rid of the last traces of democracy peculiarly of the methods of fighting and making decisions by majority—*Adolf Hitler*

Within two years after Adolf Hitler became chancellor the entire political organization of Germany was changed. The republic was transformed by a series of executive decrees into a dictatorship. On the death of President Hindenburg in 1934 no successor was chosen. As Reichsfuehrer and head of the state Hitler merely absorbed this office. The Weimar constitution was never definitely abrogated as a whole with another constitution put in its place. It was simply emasculated step by step as the occasion required. The Third Reich does not rest upon a constitution for it recognizes no real distinction in effectiveness between constitutions and laws or laws and decrees. Meanwhile the Germans have taken to using a new political chronology. The mediaeval empire is now designated as the First Reich, the period from 1871 to 1918 as the Second Reich, the years from 1918 to 1933 as the Weimar Republic or Interregnum and the Hitler regime since the last named date as the Third Reich.

What form of government has Germany today? Even Germans find that question a difficult one to answer. The present German government does not fit into any of the usual classifications. It is not monarchical although the head of the state is in office for life with the power to name his own successor. It is not republican for it is the essence of a republic that the chief executive shall hold office for a fixed term of years and that his successor shall be chosen by the people either directly or through their representatives. The Third Reich is designated by Germans as a *Fuehrerstaat* (leader state) a state based upon the principle of unquestioned leadership just as an army is. In this form of government all authority comes from above. The Fuehrer may seek and take advice if he desires but it is by his own inherent authority that he promulgates orders with the force of

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TRAN ORMA  
TION

TO WH

law levies taxes makes war or peace and determines the manner of the common life with even greater freedom from restraint than any mediaeval despot did

Yet the Third Reich cannot be called a despotism, as the term has commonly been understood because the authority of the leader is ostensibly derived from the people. There was a time, not so long ago when the world held the belief that where the masses of the people were given the right to choose their form of government there could be no danger of autocracy or dictatorship. They would always vote in favor of democracy and liberalism. But the developments of the past dozen years in several European countries have thrown doubt on this proposition. Millions of voters have gone to the polls in Germany, and have there given a manufactured consent to the extinction of their own personal liberties.

The German government of today claims to have the most truly popular basis of any government in the world because it was endorsed at the last election by almost ninety nine and nine tenths of the voters. But a government which absolutely controls all the agencies of propaganda and tolerates no organized opposition is bound to win endorsement at the polls. It merely goes to prove what the world had not hitherto suspected that universal suffrage and the secret ballot can readily be used to enthrone autocracy and destroy all freedom of political opinion. When Hitler designates his Third Reich as the most ennobled form of a modern European democracy he surely is giving this term a new definition.

#### THE RISE OF HITLER

Inasmuch as the establishment of the Third Reich in 1933 was the culmination of a National Socialist movement it is necessary to know something about the development and activities of this political organization. It began in Bavaria shortly after the close of the World War. Starting with a small group chiefly of war veterans, the National Socialist movement was mainly one of protest—against the humiliations of the Versailles Treaty the growing menace of communism, the power of the Jews in Germany and the extortions of money lenders in general.

Among the original members of this group was a young Austrian Adolf Hitler who had served with conspicuous gallantry in the Ger

man army during the war.<sup>1</sup> By the force of his personality he became the leader of the movement although he was not at that time a German citizen. Like most movements of plural protest, this one began to gain adherents especially by reason of Hitler's tireless and effective speechmaking. Moreover these were days when conditions in Germany provided plenty of ammunition for incendiary orators. The humiliations of the peace treaty with its admission of war guilt, the burden of reparations, the miseries which accompanied inflation and the heavy hand of the Allied troops in occupation of German territory combined to furnish fuel for the flames of discontent. People listened readily to anyone who could suggest a way out of their troubles—the restoration of Germany's prestige as a nation, the repudiation of war guilt, the end of reparations and sanctions, the elimination of unemployment, and the substitution of a firm, unified government for the squabbles and bickerings of Weimar republicanism.

So Hitler gathered followers and in 1923 attracted the attention of General Ludendorff who had himself become the leader of a group calling themselves Nationalists. The two joined forces and presently attempted a *coup d'état* which was designed to stampede the country and overthrow the government. But it proved to be a sorry fiasco. Hitler and various others were sent to jail, while the episode became scornfully known as the beer hall Putsch, —from the fact that the conspirators had held their meetings in a Munich restaurant. Hitler did not stay in custody very long, however, for within a year he was released and although he was admonished to do no more speechmaking he soon resumed his political campaigning. With some results moreover, for at the election of 1924 his National Socialists captured thirty-two seats in the Reichstag. From this modest beginning the strength of the National Socialists (Nazis) grew at the successive elections (but with occasional setbacks) until the party became the largest single group in the Reichstag.

Meanwhile the National Socialists had provided themselves with a political platform known as *The Twenty-five Points*. This program, which was originally written by one of the group as early as 1920

For a full account of his activities during and since the war see Konrad Heiden, *Hitler: A Biography* (New York, 1936).

Although *Nazi* is a polemical slang term in Germany, it has passed into general use among Americans as the accepted abbreviation for National Socialist.

HITLER  
EARLY  
LEADERSHIP

ITS GROWTH.

consisted about equally of denunciations and demands. It denounced the peace treaty the Communists the Social Democrats the Weimar Republic, and all its works. It demanded the union of all Germans in one great Germany (in other words the absorption of Austria) the abrogation of the Versailles treaty the return of the German colonies, the exclusion of Jews from citizenship the abolition of all income acquired without work the relief of debtors the abolition of slavery to interest the confiscation of war profits the nationalization of all trusts and business combinations the distribution of the profits of large industries the public ownership of large department stores (which by the way were largely owned by Jews) the prohibition of child labor the free education of gifted children the curbing of newspapers which work against the common good the elimination of profiteers the remilitarization of the country and the creation of a strong central government with unqualified authority over every portion of the Reich.<sup>1</sup>

Some of these twenty five points were so vague that an official commentary was issued to elucidate them and in 1924 a book by Hitler entitled *Mein Kampf* (My Battle) threw additional light on various phases of the program. These interpretations made it clear that the Nazi philosophy regarded the Jewish materialistic spirit as Germany's chief bugbear. Through the diffusion of this spirit, it was said the country had placed individual aggrandizement ahead of the public welfare thus preventing the development of a national solidarity. On the other hand neither the twenty five points nor Hitler's interpretation of them envisaged the abolition of private property or the overthrow of the capitalistic system. Within the limits of the general duty to work incumbent on every German and subject to the recognition of the principle of private ownership every German shall be free to earn his living in whatever manner he chooses and free to dispose of the results of his labor. Private initiative would therefore be fos-

<sup>1</sup> This is still the official Nazi program. It may be found in Gottfried Feder's *Hitler's Official Program and Its Fundamental Ideas* (London 1934). This book also explains the various points in detail. An English translation likewise is given in J. K. Pollock and H. J. H. Newman's *The Hitler Doctrine* (Ann Arbor Mich 1934) also in W. E. Rappard and others' *Sour Book: Europe's Grievances* (New York, 1937) Part IV pp 9-13 and in R. I. Bell's *ditto* *New Grievances: Europe* (New York 1934) pp 140-144.

An abridged English translation by E. T. S. Dugdale has been published in America (Boston 1933).

tered in economic life although slavery to interest must be ended and the productive power of the nation relieved from the burden of excessive debt charges Germany it was argued must become a home for creative productive Germans and not the abiding place of Jews Communists aliens profiteers and Social Democrats who recognize no fatherland

In the domain of foreign policy the Nazi program had as its primary objective the liberation of Germany from the political and economic shackles imposed upon it by burdensome international commitments Hitler and his associates made forthright demand for a self sufficient nation including all Germans whether living in Austria, Poland Czechoslovakia, or else here The restoration of the German colonies the abolition of the Polish corridor the expansion of German territory to the east (at the expense of Russia) and the elevation of Germany to a dominating position in Middle Europe — these were other goals which the Nazis set before the eyes of the people

REIGN  
POLICY IN  
THE HITLER  
PROGRAM

These various objectives which had become definitely formulated and interpreted by 1924 served as a rallying point for an increasing number of discouraged and disillusioned elements among the people Revolution thrives on discontent and can grow in no other soil Hitler and his fellow orators adapted the various points of the program to their audiences promising all things to all men with a sublime indifference to consistency Yet the Nazis did not become a dangerous factor in the German political situation until after 1928 because Germany was enjoying in the middle twenties an interlude of business revival due to the influx of foreign capital Meanwhile however the party was perfecting for itself a semi military organization Members were enrolled in divisions regiments and battalions of Storm Troops the ostensible purpose of which was to combat the menace of communism There was also organized a large group of *Schutzstaffeln* or bodyguards who accompanied and protected the Nazi leaders when they went around the country with their propaganda Hitler became recognized not only as the supreme leader of the Nazi party but as leader of the Storm Troops and other semi military organizations which gave him what was in effect a private army

THE ARMY  
ORGANIZATION

MILITARY

Paralleling this military organization the following was developed an

elaborate civilian set up for the party. At the head of it was the leader (*Der Führer*) with a cabinet of nineteen members, each of whom assumed responsibility for some phase of Nazi activity. For example, the party cabinet included a chief of staff of the Storm Troops, a director of the press bureau, a youth leader, a propaganda director, a business manager, and so on. Then the country was divided into districts (*Gaue*) each under the management of a district leader. Within every district the party organization was divided and subdivided under local leaders right down to the the Nazi *Blockwart*, a party official in charge of a single city block. Finally, there were innumerable cell organizations operating in factories, stores, schools, and among agricultural workers. Ancillary to this regular party organization were such associations as the league of Hitler Youth which kept the party ranks recruited from below.

Gradually in this way the Nazi network was extended into every nook and corner of German life. Brown shirts, emblazoned with the party emblem (the swastika) were in evidence everywhere. Speakers by the thousand were sent to all parts of the Reich, protected by squads of Storm Troops, to spread their gospel. This cost a great deal of money, but every member of the party paid dues. The campaign funds were also augmented by contributions from many non Nazis, including large industrialists, who looked upon the movement as their chief reliance against the spread of communism. Hitler moreover showed himself a master of crowd psychology. His organization adopted a symbolic ritual and developed an elaborate military ceremonial (including a new salute) which encouraged every Nazi to look upon himself as a knight in the new crusade.<sup>1</sup> All in all the National Socialists, using the two simple principles of leadership and discipline, brought their party organization to a very high degree of efficiency and developed an aggressiveness which no other German political party approached.

But neither the compendious generalities of the National Socialist

The Nazis also adopted a militant song, the Horst Wessel Song, which has now become a sort of national anthem for the Third Reich. Its composer, Horst Wessel, was a University of Berlin student and Storm Troop leader who was shot by a group of all-god Communists in 1930. One verse of this battle hymn (in English translation) runs as follows:

Clear the streets of the brown battalions!  
 Out of the way for the Storm Troop march!  
 Millions with hope see the swastika emblem,  
 Bread and Freedom are here again.

program nor the excellences of the party organization would have availed to place Hitler in power had it not been for various other forces which played into his hands. First among these was the severity of the economic depression which began in Germany as in the rest of the world during the years 1929-1930. The years immediately following the close of the war had been bad enough for the German people with the lurid experience of uncontrolled inflation which swept away the property of the middle classes and disorganized the whole economic life of the country. But the Weimar Republic weathered the storm and during the middle twenties seemed to be getting more solidly on its feet.

REASONS OR  
THE NAZI  
SUCCESS

THE  
ECONOMIC  
SITUATION

With the onset of the world wide depression in 1930 however the government could no longer stem the tide of increasing unemployment or assure to the masses of the people a reasonable standard of living. Banks began to totter and industries shut down. The country defaulted its reparation payments. International trade fell off and the inflow of foreign capital ceased. Although the economic crisis in itself was hardly worse than it became in the United States during the early months of 1933 the immediate effects upon the people were much more severe because Germany had no reserves to go on. The monetary inflation which followed the war had wiped out the savings of the middle classes and the brief prosperity of the later twenties itself largely induced by foreign capital had not been adequate to replace them. So the country went rapidly and deep into economic disorganization. Work and bread the Nazi slogan carried a strong appeal to the millions who were without jobs.

The existing government seemed utterly unable to deal with this crisis. It could not or would not stem the tide of economic deflation. In Germany as in America the people demanded a new deal but no ministry could keep itself in power long enough to give it to them. The democratic forces which were behind the Weimar Republic had no leader who could hold them together and capture the imagination of the people by proclaiming a forthright policy. It is rather significant that the only figure of national stature connected with the republic was President von Hindenburg himself a monarchist at heart, and a Wooden Titan besides.<sup>1</sup>

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<sup>1</sup> See J. W. Wheeler Bennett biography of Hindenburg (the best yet published) titled *The Field Marshal* (New York 1936).

Hitler was fond of saying during these years that party was merely fighting party the Reichstag was fighting the government, and the government was fighting the people. Spasmodic attempts to alleviate the situation by the issue of emergency decrees seemed only to make matters worse. People will not starve in the name of democracy. The masses would rather be secure in their daily bread than in their right to freedom of speech, if they have to make a choice. As between steady jobs and freedom of the press they will take the former if there is no third alternative. Democracy after all is a fair weather craft. People believe in it when things are going well. But when a typhoon comes they clamor for strong hands at the helm, and to secure this they seem ready to make almost any sacrifice of political principles. The history of economic depressions in all countries gives proof of this.

Another factor which expedited the growth of Hitlerism was the unsatisfactory character of Germany's foreign relations. Not only had the Germans been needlessly humiliated by the Treaty of Versailles being forced to acknowledge the entire guilt for the outbreak of the war but many provisions of the treaty were harshly interpreted by the victors. One ultimatum from the Allies followed another each backed up by threats of penalties. No self-respecting German could be proud of his country during these years. For the nation which had once been looked upon as the foremost power in Europe now saw her colonies taken away her navy obliged to surrender and be destroyed her army reduced to a Reichswehr of 100 000 men, military air forces prohibited reparations exacted her territory cut asunder by the Polish corridor a union with Austria outlawed and some of her most valuable sources of raw materials (such as the Saar) kept from her.

To cover the unwillingness of the Allies to modify the harsh provisions of the Versailles Treaty disillusioned the German people about the processes of peaceful diplomacy. The League of Nations seemed to be providing Germany with no means of relief from her international humiliations. Although President Wilson and his fellow liberals at the peace conference had aroused in the German people a spark of confidence in peaceful methods of adjusting international disputes this was extinguished by the rigidity with which the terms of the treaty were enforced. Consequently they listened more readily to Hitler's declara-

3 THE  
APPEAL TO  
PATRIOTISM.

TO THE  
MARTIAL  
SPIRIT



tion that the only way to get relief from the humiliations and burdens of the dictated peace was to rearm the nation and rely once more on force as the only dependable instrument of international diplomacy. Then Germany the Hitler orators declared would take whatever she needed or desired irrespective of treaties.

Nor did they omit to impress upon their hearers that although Germany had won most of the battles she had lost the World War through a stab in the back, in other words that the army had been betrayed by a government which, at the time of the armistice, was dominated by Social Democrats Catholic Centrists and parliamentary liberals of other varieties. It was by the representatives of these political groups that the bitter terms of the armistice had been accepted and the subsequent peace treaty signed. The Weimar Republic they screamed was a republic of traitors. It had been established they said at the behest of the Allies who wanted Germany to have a weak government. For had not President Wilson insisted upon the demolition of the Second Reich before even an armistice could be granted? By way of contrast with all this the Nazi leaders pledged themselves to rebuild the army thus facing the outer world with a phalanx of steel to make Germany once more a great naval power to create an air force second to none to repudiate all the limitations placed upon the Reich by other countries to sweep the foreign office with an iron broom, and to regain for Germany her rightful place as an equal in the family of nations. The impact of these appeals upon the national spirit was overpowering.

#### THE NAZIS AND THE JEWS

Then there was the capitalizing of anti-Semitic prejudice. Prior to the World War there had been a certain amount of official discrimination against the Jews in Germany although it never extended to persons of partial Jewish ancestry. Jews and part-Jews as a matter of fact, had never formed a large element in the population of modern Germany. The estimates vary and must necessarily be guesswork because there is no accurate way of determining how many Germans have a slight Jewish dilution of their professed Aryan purity. A liberal estimate however would be less than three million non-Aryans in a total population of over sixty-five millions. During the imperial regime all German Jews had been permitted to exercise all

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the ordinary civil privileges although they were seldom found in the higher ranks of the military and naval service. They were fairly well represented in the legal profession, the civil service, the judiciary and the universities. It was in the realm of business, however, that they made the greatest headway. Members of the Jewish race accumulated a good deal of economic power in pre-war Germany through their control of banking and credit as well as through the ownership of large industries, department stores and newspapers. They figured prominently among the captains of industry, the barons of finance, and the owners of the great journals of information as well as in the fields of literature, art, music and public recreation.

The Revolution of 1918, the Weimar constitution and the new liberalism gave them still greater scope. This constitution declared all Germans to be equal before the law and abolished all privileges and discriminations due to birth. Its principal author was a Jew.<sup>1</sup> And immediately after the new organic law went into effect the Jews began to play an enlarged part in German public life. It was quite natural that this should happen with the incoming of the new regime, for in a democratic republic it is the lawyers, bankers, merchants and newspaper men rather than members of the nobility or large landowners who generally take the reins into their hands. Jewish lawyers became especially prominent in the Progressive party and in the Social Democratic party during the republican interlude.

It has often been alleged by their Nazi persecutors that German Jews swarmed into the government service during the era of the Weimar Republic and were responsible for many of the nation's vicissitudes during these years. And it is probably true that there were more Jews on the public pay roll in 1933 than there had been at the close of the war. But even so, they formed a very small element in the whole service—less than one per cent. Nor do the figures indicate that members of the Jewish race were numerous in the policy-forming branch of the government under the Weimar Republic. More than 250 ministers served in the various German cabinets between 1918 and 1933, but of these not more than a dozen were of Jewish or part Jewish ancestry.

In the course of the great inflation, moreover, when fortunes van-

<sup>1</sup> Dr. Hugo Preuss. See his volume entitled *Um die Reichsverfassung* (Berlin, 1914).

ished everywhere the bankers industrialists and merchants naturally fared better than persons with fixed incomes who had their savings wiped out That is what usually occurs during an uncontrolled inflation And it happened that many of these bankers industrialists and merchants were Jews Leading Jewish bankers and traders had foreign affiliations as all bankers and large traders have For this reason they were alleged to be in a conspiracy with Germany's neighbors to enforce the payment of reparations and keep the nation poor Hitler's oratorical barrage also directed itself against what he termed the Jewish alliance with communism as illustrated by Russia where Jews figured prominently among the Soviet leaders

THE JEW  
DURING THE  
INFLATION

Now it is a rather significant fact that of all races in history the Jewish race is the one that has been most frequently persecuted And there would seem to be more than one reason for this Something may be attributed to the inherent capacity of the Jewish race especially in the fields of trade and finance The Jew as a rule is hard working shrewd thrifty saves his money invests it profitably and makes two or three shekels grow where one grew before In competition with races which do not possess these qualities the Jews are bound to win but on their way to the top they often leave a trail of envy and resentment behind Much of the animosity towards the Jews at all times in modern history has not been because of their Judaism but because of their economic competence And Israel shall be a prove brought wrote one of her prophets and a by word among all the peoples

WHY THE JEW  
IS  
SECURED  
( ) THE  
ENVY OF  
OTHERS

Envy and resentment, however have not been the only main springs of anti Semitic hostility The Jews in the main do not spread themselves uniformly into all the locations and professions but tend to concentrate into a few of them They do not intermarry freely with other races but keep their racial integrity well guarded Scattered over the face of the earth for more than a thousand years without a homeland it is amazing that this race should have so well preserved its solidarity By so doing however it has rendered its members easy to distinguish from the mass of the people when any movement for discrimination arises The Jew moreover tends to be an individualist and an internationalist As a rule he is not intellectually docile as the rank and file of most other races are he inclines to think for himself rather than

(b) OTHER  
REASONS

to let somebody else do it for him. While he performs his civic duties with reasonable fidelity the Jew's patriotism is not of the aggressive type. And quite naturally he has never reconciled himself to the idea that Germans, Russians, Spaniards or any of the other people among whom he has lived are the salt of the earth. This of course renders him guilty of what the French Jacobins called *incivisme* the offense of not being sufficiently effusive in his enthusiasm for the government under which he happens to live.

Mention may also be made of the fact that when economic disasters overtake any country with widespread and tragic losses of fortune the Jews seem to fare better than most other people. This is partly because of their shrewdness and caution but it may also be due in part to the long schooling which the race has had in the art of finding a safe haven when trouble impends. Harsh discrimination in all ages and in nearly all countries has naturally developed in the Jew a certain measure of skill in looking out for himself. The German Jews were charged with having profiteered during the war but if they did they certainly had no dearth of Aryan company in doing this. It was said that most of the Jews who were called into service during the war either found ways of escaping this service or managed to get safe posts away from the battle fronts—an allegation which the figures prove to have been without any foundation. They were assailed for having managed to keep some of their wealth when others lost it. In fact it was frequently charged by the Hitler propagandists that they had scuttled the ship by withdrawing capital from industry and sending it to safety abroad thus accentuating the depression at home.

Some of these charges were without foundation but they were widely believed and gained adherents to the Nazi cause. And immediately following Hitler's seizure of power the persecution began in earnest. First it took the form of a boycott with the picketing of Jewish stores and offices by Nazi Storm Troopers. Then followed a decree for the purging of the civil service. This decree besides barring all Jews and other enemies of the state from public employment contained what has become known as the grandmother clause—a provision which extended the disbarment to anyone who could be shown to have had Jewish grandparents. The civil service decree soon became the model for other regulations and orders which were intended to harry the Jews out of

THE  
ACCUSATION  
OF SCUT-  
TLING THE  
SHIP

THE BOYCOTT

all other positions of responsibility semi public and private throughout the Reich. Step by step they found themselves virtually excluded from employment by railroads and banks from the legal and teaching professions from journalism, and from an increasing number of activities—vocational, social, and cultural. Even the universities slammed their doors against Jewish students. Finally by a decree based on the Reich citizenship law of 1935 it was provided that a Jew cannot be a Reich citizen. He is not allowed to vote in political affairs; he cannot hold a public office. In the same year a law for the protection of German blood and German honor forbade the intermarriage of Jews with citizens of German or kindred stock. Thus deprived of their citizenship and of the means whereby they were earning a livelihood, large numbers of Jews have had to leave Germany and flee as refugees to other countries. Among these are many of the foremost among the nation's scientists and men of letters.

But Hitler did not ride into power on the crest of an anti-Semitic crusade alone. There were numerous classes to whom his compendious program carried an appeal. Small shopkeepers who felt the keen competition of large department stores and chain stores lent a willing ear. Landowners and houseowners whose property was mortgaged to the banks saw in Hitlerism an avenue of escape from their interest burdens. This was particularly true of the small farmers or peasants who became the principal objective of Hitler's mass appeal. The promise to abolish interest on mortgages, loans, and all other forms of indebtedness (a promise which, by the way, the Hitler government has never carried out) drew a large fraction of the debtor class into the Nazi ranks.

5 OTHER  
ACTORS  
WHICH  
FAORED  
HITLER.

There were several million German workers out of employment during the early thirties; moreover, and most of these people, including university graduates and other white-collar workers, took at face value the Nazi promise to give everyone a job. They did not realize then, as they do now, that many of the jobs would be as farm helpers or in labor camps with scythe and spade, pick and shovel. German youth likewise were captivated by the pledge of a new era in which their fatherland would have first place among the virile nations of the world. They were also intrigued by the Hitlerite declaration that it is the duty of the national government to provide the necessities of life, and that a limit shall be set to the immoderate

amassing of wealth in the hands of individuals. Even the big industrialists turned in many cases to the ideology of national socialism as the most dependable bulwark against the menace of communism. Among the twenty five points there was something for nearly every one. It is rather surprising in fact that the National Socialist program did not completely sweep the country.

Yet when Hitler became chancellor in the early days of 1933 his party did not possess a majority in the Reichstag. It was therefore necessary for him to form a coalition ministry which he did. But it soon became apparent that he did not intend to be the head of a coalition government very long. A dissolution of the Reichstag was promptly decreed by President Hindenburg (although he had just refused a dissolution to Hitler's predecessor) and a new election was ordered. At once the Nazi members of the ministry took full control of the preparations for this election backed by their party organization which now ramified into every part of the country. In propaganda they excelled and their giant propagandist machine was thrown bodily into the campaign. Hitler's Storm Troopers were inducted into the police as auxiliaries so that they virtually controlled the enforcement of law and the maintenance of order during the campaign. A communist scare of large proportions was artificially created, all opposition speechmaking and electioneering were eliminated by Storm Troop pressure and electoral intimidation became the order of the day. The outcome of the campaign was made more certain by the burning of the great Reichstag building in Berlin a short time before the date set for the balloting. The origin of this conflagration is still a mystery but the National Socialist leaders lost no time in blaming it on their opponents especially on the Communists.<sup>1</sup> It gave the government an opportunity to arrest the opposition leaders to throttle the press and to suspend until further notice all the personal liberty provisions of the Weimar constitution.

The German people went to the polls in March 1933 with passions roused to an extreme. But despite their tactics of wholesale intimidation the National Socialists did not manage to secure a majority of the seats in the Reichstag. By joining with a closely allied group of Nationalists however they were able to control the

<sup>1</sup> For an impartial witness see the *London Times* correspondent's dispatch in *The Burning of the Reichstag* (London 1934).

Chamber by a narrow margin.<sup>1</sup> The victory was not clean cut but it sufficed. The newly elected Reichstag met for a single sitting (with the Communist members excluded) and obediently passed an Enabling Act which virtually concentrated all political power in Hitler's hands. In addition to the National Socialists the members of the Catholic Center and of several other groups voted for this act, being cajoled by assurances which were never fulfilled. They were also influenced, no doubt, by a speech made to them by Hitler in which he announced that the government insists upon the passing of this law

but is equally resolved and ready to meet the announcement of refusal and thus of resistance.

The first two articles of the Enabling Act deserve to be quoted.

*Article I* National laws can be enacted by the Reichsmynistry as well as with the procedure established in the constitution. Thus applies also to the laws referred to in Article 85 paragraph 2 (the power to legislate) and in Article 87 (the power to borrow) of the constitution.

*Article II* The laws enacted by the Reichsmynistry may depart from the constitution so far as they are necessary for the execution of the laws of the Upper House (Reichsrath) and the Reichstag. The powers of the President remain untouched.

These two provisions, it will be noted, conferred upon the ministry all the members of which were named by Hitler, the power to enact laws both inside and outside the constitution. An additional article provided that the ministry might also make treaties without consulting the legislative chambers. The Enabling Act was valid as an amendment to the Weimar constitution because it was passed by a two-thirds majority in the Reichstag, but it was an amendment which emasculated the entire document. At a single stroke the newly elected Reichstag abdicated its own powers and left the nation with virtually no constitution at all. Having passed this amazing piece of legislation the Reichstag adjourned and did not meet again.

#### ORGANIZATION OF THE THIRD REICH

Then things began to happen with drumfire rapidity. All political parties in the Reich, with the exception of the Nazis, were forthwith dissolved. The latter were duly declared to be the only recognized

<sup>1</sup> The total Reichstag membership was 647. The National Socialists obtained 288 seats and the Nationalists 52.

<sup>2</sup> The first of the Enabling Act signed by Hermann Weisinger and others. See *Epoch and Germany* (New York 1937) Part IV, pp. 14-15.

political party Communists were harried out of the land Per  
 THE RAPID  
 SUCCESSION  
 OF RADICAL  
 CHANGES. secution of the Jews was begun on a large scale cul  
 minating in their complete loss of citizenship (Septem  
 ber 1935) Members of the ministry other than Nazis  
 were eliminated The Upper House (Reichsrat) was  
 abolished in spite of the limitation which had been placed in Arti  
 cle II of the Enabling Act In 1934 on the death of President Hin  
 denburg the powers of the presidency were merged with those of the  
 chancellor The office of Fuehrer which now combines the presi  
 dency and chancellorship was given life tenure Its incumbent is en  
 titled to name his own deputy And the Enabling Act was widened  
 to give the ministry the right of enacting new constitutional laws  
 without restriction whatsoever

The political structure in the Third Reich has thus been simplified  
 to a point where it requires no elaborate description There is no  
 THE N W  
 NATIONAL  
 GOVERNMENT constitution The head of the government is *Der*  
*Fuehrer* president and chancellor combined appointed  
 for life He chooses the ministers who hold office dur  
 ing his pleasure and are responsible to him alone At present the  
 ministry includes besides the chancellor fifteen members Thirteen  
 of them are heads of departments namely finance foreign affairs  
 interior defense economic affairs food and agriculture labor com  
 munications and posts justice aviation education church affairs  
 and propaganda Two others are ministers without portfolio In  
 addition there are many boards and commissions appointed by and  
 responsible to the ministry The Reichsrat or Upper House no  
 longer exists But the Reichstag (elected in March 1936) continues  
 in being although it now contains virtually none but National  
 Socialists because the voters were given no alternative but to vote  
*Yes* or *No* on a single slate of candidates submitted to them by the  
 government As a body it retains no real function except to hear and  
 acclaim an occasional address by Herr Hitler

Organization for the control of economic life in Germany is much  
 more complicated This consists of a vast network comprising all  
 ITS VAST  
 MECHANISM  
 FOR  
 ECONOMIC  
 COORDINA  
 TION manner of bureaus estates boards commissions,  
 directors trustees leaders inspectors coordinators,  
 and what not In general all of these are linked up  
 with one of the regular ministerial departments, such  
 as economic affairs food and agriculture labor or  
 finance but in some cases they have a very large measure of inde



pendence. The elaborate regulations for stimulating production, fixing prices, distributing labor, and controlling foreign trade are framed and enforced by these boards and functionaries, as will be explained in the next chapter.

During the fourteen years preceding 1933 there was provision for the use of the initiative and referendum in Germany. The Nazi government has abolished the former and greatly limited the latter. A referendum or plebiscite may now be held only when the ministry orders it. This restriction has kept the weapon of a popular vote from becoming a danger, while on the other hand it has afforded Hitler an opportunity to use the political technique which was so popular with the two Napoleons, namely, that of doing something dramatic and then calling upon the people to ratify it.

THE  
REFERE-  
DUM  
PROCEDURE

Under both the imperial constitution and the Weimar constitution German administration was largely in the hands of a permanent civil service. This was a well-trained, efficient body, the members of which were appointed without reference to party service and enjoyed security of tenure. When the republic was established immediately after the close of the World War, its leaders did not turn out of office all those who had served in subordinate posts under the empire. Practically all were retained in their old positions; there was no general purging of the service by the new republican authorities. It is probably true that some members of the old bureaucracy did not do their best to popularize the new republic, although complaints on this score were exaggerated.

PURGING  
THE CIVIL  
SERVICE

But the National Socialists, when they came into power, decided to do differently from their predecessors. One of their first steps was to promulgate a new civil service law (April, 1933) which ousted all officeholders of non-Aryan descent except those who had served in the war or whose fathers or sons had been killed in the war.<sup>1</sup> In addition, this law provided for the dismissal or transfer of all officeholders whose political affiliations were open to criticism or who had at any time 'come out in an offensive manner' against the Nazi movement. These provisions made it possible to dismiss or transfer to a lower post almost any officeholder, and most of those who could not qualify as bona fide sympathizers with the Hitler program were gradually eliminated.

HOW IT WAS  
EFFECTED

In 1935 these exempted Jewish officeholders were also eliminated but allowed to retain their pension rights.

The law of 1933 has now been superseded by a new civil service law promulgated as a cabinet act in 1937 which completes the process of making the hureaucracy an integral part of the totalitarian state.<sup>1</sup>

To realize the vast extent of this administrative house-cleaning it needs to be borne in mind that the German civil service includes not only what the term implies in America but judges school teachers university professors and all persons engaged in certain semi public enterprises. Provisions similar to those of the civil service law have also been incorporated in regulations for admission to the legal profession the medical profession and even the universities. According to the official figures however there are still a good many non Aryans in some of these professions but they are gradually being weeded out.

The judicial system has also been considerably reorganized. Since April 1935 there have been no state courts in Germany. All courts from highest to lowest are organs of the national government. Under the empire and the republic all the regular courts except the *Reichsgericht* or supreme court were state courts. In a general way the old hierarchy of courts has been continued but it has been made uniform and nationalized. The change has rendered it possible for the government to 'purify' the courts and make sure that all the judges are not lacking in sympathy with the political authorities. On the other hand the German judiciary has not had its spirit of indepedence completely crushed out as is demonstrated by the way in which persons brought to trial by government prosecutors have frequently been acquitted by the judges.

The ordinary courts begin with the *Amtsgerichte* or local courts which exercise original jurisdiction both civil and criminal in the general run of cases. Ordinarily a single judge conducts the proceedings in this local court but in the trial of serious crimes the judge is assisted by two lay men as assessors or jurymen. These two jurors are

<sup>1</sup> OCA  
COURTS  
( MTSC  
RICHTER)

As this consolidated civil service law of 1937 contains no fewer than 184 sections a summary of its provisions is hardly practicable here. But in general the law excludes all non Aryans from the service and virtually requires every non-entrant to be a member of the local Nazi party organization. Then it lays down arbitrary technical qualifications, provides for life tenure after five probationary years in certain cases, and devotes many pages to such matters as salaries pensions discipline hours of work, and the maintenance of the secret service. A good account may be found in James H. Plock and Alfred V. Boernigke, *The German Civil Service Act* published in 1938 by the Civil Service Assembly of the United States and Canada.

chosen by lot from the citizenship and are consulted by the judge in reaching his decision

Next above these local courts are the district courts (*Landgerichte*) of which there are more than 150 throughout the Reich. Each of these courts has two sections—one civil and one criminal. Each section has a presiding judge and two or more associate judges. These courts hear appeals from the local courts and also have original jurisdiction in cases which are beyond the competence of the latter. For the trial of very serious crimes (those punishable by death or life imprisonment) there are special jury courts (*Schwergericht*) established in connection with the district courts. But these courts do not use juries in the American sense. Each German jury court has three judges together with six jurymen or assessors chosen by lot. All sit together and determine the verdict by majority vote. In some instances the district court has additional sections beyond those dealing with ordinary civil and criminal cases—for example, a commercial section to deal with business controversies.

2 DISTRICT  
COURTS  
(LAND-  
GERICHTE)

Then there are the superior courts (*Oberlandesgerichte*) twenty-seven of them. They serve as courts of appeal and are divided into sections each section having from three to five judges. For the trial of persons accused of treason a special court known as the People's Court (*Volksgerichtshof*) has been established. Other special courts known as *Sondergerichte* have been set up in each superior court district for the trial of certain specified offenses against the Reich, the people or the National Socialist party. A law which was promulgated on July 5 1935 embodies a novel principle of jurisprudence in that it empowers the courts to punish any offense even though it is not punishable under the criminal code if the court feels that the offense is one that deserves to be punished in accordance with a healthy public sentiment. Thus far however this provision has been very little used although it would seem to have large possibilities for oppression.

3 SUPREME  
COURT  
(OBER-  
LANDS-  
GERICHTE)

Finally there is the supreme court (*Reichsgericht*). It is an inheritance from the old regime. The German supreme court does not sit in Berlin but at Leipzig. It has about a hundred judges who sit in sections or senates of five or more judges each. The court exercises a final appellate jurisdiction over all the other courts. Under the Weimar constitution the supreme judicial court was given power to de-

4 THE  
SUPREME  
COURT  
(REICHS-  
GERICHT)

clare state laws unconstitutional but now that the state legislatures have been abolished such issues no longer arise

In Germany the distinction between ordinary and administrative law has long been recognized Under the Hohenzollern empire and during the period of the Weimar Republic the distinction was fully recognized Special administrative courts were maintained for the adjudication of suits brought by citizens against the government or its officials The Weimar constitution provided for the creation of a supreme administrative court (*Reichsverwaltungsgericht*) corresponding to the council of state in France, but this has not yet been done In a general and somewhat spasmodic way the Nazi government continues to recognize a distinction between ordinary and administrative law and the civil service act of 1937 gives public employees certain rights of appeal to the administrative courts but the idea that the citizen has legal rights against his government with power to enforce these rights in any court,—that idea does not have any place in the political philosophy of national socialism

The Third Reich is well provided with special courts such as labor courts (*Arbeitsgerichte*) and courts of social honor (*Soziales Ehrengerichte*) which deal with controversies between employers and workers<sup>1</sup> There are three gradations of these labor tribunals topped by a supreme labor court These courts handle a vast amount of business Special courts of the Agricultural Estate and of the Estate of Industry and Trade settle controversies between members within these organizations<sup>2</sup> Mention should likewise be made of the health courts (*Erbgesundheitsgerichte*) of which there are more than two hundred scattered throughout the Reich Each health court is composed of a judge and two physicians they administer the Nazi laws relating to eugenic sterilization

Not only the courts have been unified but the police system as well Prior to the advent of the Hitler regime each of the German states controlled its own police establishment and they usually delegated a portion of this control to the municipalities Now there is a uniform system throughout the entire Reich with centralized control and standardized police procedure The nation wide organiza-

ADMINIS-  
TRATIVE  
COURTS

SP. C. AL  
COURTS

THE  
UNIFICATION  
OF THE  
POLICE  
FORCES

tion is divided into branches such as the *Ordnungspolizei* and the *Sicherheitspolizei*. In addition there is a special body of secret state police known as the Gestapo with the special function of ferreting out political offenders.

#### STATE AND LOCAL GOVERNMENT

One of the much used terms in the lexicon of National Socialism is *Gleichhaltung*. The word is not easily translated into English but in general it signifies the ordering of all things into the same groove, the shunting of all cars onto the same track, the casting of all metals in the same mould. Our usual rendition into English is coordination. Now it will be recalled that the fifteen German states under the Weimar constitution retained a considerable measure of local self government. Each kept its own executive, legislature and judiciary. But with the advent of the Nazi government in 1933 the process of coordinating these governments with the Reich was rapidly pushed forward. By a law which the complaisant Reichstag enacted (January 30, 1934) on the first anniversary of Hitler's accession to power, the state legislatures were abolished, the powers of the states were transferred to the Reich, the state ministries were made responsible to the national ministry, and the various states (with the exception of Prussia) were placed under the administration of national governors. Each state governor (*Statthalter*) is appointed by the national ministry on recommendation of the minister of the interior. Prussian affairs however are kept under the supervision of the supreme leader but are directly in charge of a minister-president appointed by him.

By these arrangements the German states have been coordinated with the Reich. Germany has ceased to be a federalism and has become a thoroughly centralized nation. The avowed purpose of the Nazi leaders has been to get rid of the state rights and eventually of state boundaries, replacing them by national supremacy exercised in artificial districts (*Reichsgaue*) similar to the French departments but on a larger scale. A complete system of districting has not been put into effect, nor has much progress been made in that direction as yet although the government has recently reiterated its purpose to carve the entire Reich into districts averaging between three and four million inhabitants each.

THE  
GLEICH  
HALTUNG  
PROCESS

STATES  
REPLACED  
BY DISTRICTS

FEDERALISM  
ABOLISHED

Municipal government in Germany has also been coordinated. Prior to the Nazi revolution each of the German states had its own municipal system and they varied considerably among themselves<sup>1</sup>. The new German Municipal Code of 1935 however provides a uniform framework for all of them and lays down certain principles which are intended to ensure the full cooperation of the cities in the policy of the Reich<sup>2</sup>. This code is a comprehensive one embodying many details of local administration<sup>3</sup>. In general it abolishes the elective city councils and replaces them by appointive councils having advisory powers only. The burgermeisters who were formerly chosen by the city council are now appointed by the Reich's minister of the interior on the recommendation of the Nazi party's local representative<sup>4</sup>. The burgermeister in each city is assisted by chief executive officers (*Beigeordnete*) whom he appoints but only after receiving the recommendations of the party agent. Burgermeisters and their chief assistants are chosen for twelve year terms. Members of the advisory city council are selected by the local agent of the National Socialist party in agreement with the burgermeister. While the powers of the council are of an advisory character only the municipal code sets forth a list of matters on which the council must be consulted by the burgermeister before a decision is reached by him, but if the matter does not admit of delay the burgermeister may proceed without consulting the council.

Other provisions of the municipal code deal in detail with such matters as local finance and taxation budgets and budgeting procedure municipal utilities and public works the management of municipal property and the status of city employees. But every branch of municipal administration must be conducted under the supervision of the national authorities. The minister of the interior is designated by the municipal code as the highest supervising authority. He or his subordinates, the regional governors may require any order to be issued any ex-

Rog H Wells *Germ. Citie* (Princeton, 1932) and B W Maxwell *Contemporary Municipal Government of Germany* (Baltimore 1928).

Known as the *Deutsches Gemeindeordnung* or more briefly as the DGO. The official text is published in the *Reichsgesetzblatt* (1935) I pp 49 ff.

An English translation is published in W E. Rappard and others *Source Book: European Governments* (New York, 1937) Part IV pp 34-65.

This party representative after consulting with the advisory city council recommends three candidates for the position of burgermeister and the minister of the interior then makes the confirmation from among these three.

penditure to be made or any action to be taken by the municipal authorities. Or they may revoke and annul any action taken by the local authorities on their own initiative. This complete subordination of the municipalities to the Reich is provided the code rather naively declares in order to be sure that their affairs are managed according to the purposes of the Reich's leadership and in harmony with the policy of its government.

The provisions of the municipal code do not apply to Berlin. The capital city has a special regime. Instead of a burgemeister it has a national commissioner as its chief executive. In accordance with the *Führerprinzip* or principle of centralized leadership all municipal authority is concentrated in this commissioner, subject to supervision by the minister of the interior. There are executive officers to assist him and a nominated council with advisory powers.

BERLIN

On the changes made by the Third Reich and its present organization much interesting material will be found in Fritz Mostern Marx *Germany and the Third Reich* (2nd edition New York 1937) Henri Lichtenberg *The Third Reich* (New York 1937) R. L. Buell editor *Governments in Europe* (revised edition New York 1937) H. F. Armstrong *Hitler's Reich: The First Phase* (London 1933) Wickham Steed *The Making of Hitlerism* (London 1934) Fritz Ermerth *The New Germany: A National Socialist Government* (The New Practice) (Washington 1936) Roy Pascal *The New Dictatorship* (London 1934) G. Rühl *Das Dritte Reich* (Berlin 1935) A. M. van den Bruck *Germany: The Empire* (London 1934) Calvin B. Hoover *Germany Enters the Third Reich* (New York 1933) H. J. Heneman *The Growth of European Power: Germany* (Minneapolis 1934) Gottfried Feder *Hitler's Official Program and Its Foundation in Ideals* (London 1934) and Adolf Hitler *Mein Kampf* (Boston 1933).

The standard German work on the constitutional question in the Third Reich is Ernst Rudolf Huber *Verfassung* (Hamburg 1937). A monumental printed collection of the laws and decrees is contained in Werner Hoche *Die Gesetze, Verordnungen und Verfügungen Hitlers* (Berlin 1933-1937) which has already run to twenty-three volumes. The more important of the earlier decrees are included in J. K. Pollock and H. J. Heneman *The Hitler Decrees* (Ann Arbor Mich. 1934). Some are also printed in W. E. Rappard and this *Selected European Government* (New York 1937) Part IV pp. 9-702 and various other texts are included in N. L. Hill and H. W. Stoke *The Background of European Government* (New York 1935) pp. 412-446.

See also the bibliographical references at the close of Chapter XXXIV.

## CHAPTER XXXVI

### GERMAN POLICIES AND PROBLEMS

What I do know is that the Germans understand nothing of the part of man—H G W II

In a previous edition of this book published a half dozen years ago there was a chapter on German political parties and politics. There can be no such chapter now for there is only one political party in the Third Reich and there is nothing that can be called party politics in any sense of the term. When an American talks politics he defends or defames the party in power as may suit his own inclinations. The German either praises the National Socialist party or he doesn't talk politics at all.

According to the Nazi political philosophy the German Reich rests on three pillars—people, party and state. The people (*Volk*) are the raw material out of which the edifice is built hence they must be racially pure and undefiled. To attain the highest good of each individual they must be welded into a coordinated whole. In all their varied activities they must be actuated by a common purpose and work in unison under leadership. The party, on the other hand, has the function of planning this program of united effort and directing it while the state lends the weight of its sovereign authority to the task of putting all the details of the program into effect. It is the instrument of the people whose will is expressed through the party. That being the case there is room for only one party; no rival parties can be tolerated. The National Socialist party has the entire field to itself.

The law of July 1933 which gave the Nazi organization a monopoly in the arena of German politics is brief and to the point. It contains only two short articles as follows:

1. The National Socialist German Workers party is the only political party in Germany.

2. Whoever undertakes to maintain the organization of another political party or to form a new political party is to be punished with imprisonment or penitentiary up to three years.



Thus is accomplished the complete coordination of the party with the Reich. The party as such has become an official branch of the German government. But unlike the Communist party in Russia the National Socialist party does not include in its membership only a small fraction of the German people. On the contrary it now claims members by the million, a great many of whom joined the caravan when it was nearing the promised land or after it had arrived. In its earlier stages the regular party organization admitted members quite readily, but of late its leaders have been inclined to close the gates upon the older generation. Recruitment is now made almost entirely from former Storm Troopers, the Hitler Youth and the corresponding Union of German Girls. An Aryan pedigree undiluted back to at least 1800 is an essential of admission. Organizations controlled by the party, such as the Labor Front, the Agricultural Estate, the Estate of Industry and Trade, and the Chamber of Culture, have a combined membership which includes nearly the whole adult German population. The nature and work of these various organizations will be explained presently.

The headquarters of the National Socialist party are in Munich, where the movement originated. Its organization, like that of the government, is based on the principle of leadership and discipline. Hitler is head of the party, as he is head of the Reich. But he has delegated most of the functions to a deputy leader. There is a party cabinet, with such departments as foreign affairs, defense, justice, propaganda, local government, racial policies, and so on. There are regional, district, and local organizations, each with its recognized leader, and each in hierarchical subordination. There are recognized party representatives or agents in every German community, and they must be consulted by the regular officials on various matters. The party is a corporation at law. Its constitution is determined by its leader. For the punishment of offenses against party discipline, there is a regular ladder of party courts, with a supreme court on the top rung. These courts may impose fines or imprisonment.

NAZI PARTY  
ORGANIZATION

#### ECONOMIC REORGANIZATION: INDUSTRY

National socialism in Germany has undertaken as its goal the complete refashioning of economic society while retaining the institutions of private property and capitalism. It is endeavoring to reconcile these institutions with the totalitarian idea which requires

that all the activities of the people whether political economic or cultural shall be directly under the control and guidance of the state. It envisages a wartime organization of all these activities as a normal and not merely as an emergency condition. Nothing can be left to go its own way and follow its own bent for by so doing it might exert a counter-clockwise influence on the national solidarity. The government must be the agency through which all human interests and not merely a few of them are managed. This totalitarian concept provides a key to the understanding of what the Nazi government has done during the past few years not only in the domains of industry labor trade agriculture and finance but in its extension of control over the churches the press and even the recreational activities of the people.

The original Nazi program of twenty five points contained a substantial number of pledges with respect to industrial reorganization and attempts have been made to carry some of these into effect. Beginning in 1934 German industry and commerce have been reorganized into an Estate of Industry and Trade under the ultimate control of the minister for economic affairs. The groundwork for this organization was provided by the various industrial associations chambers of commerce and handicraft bodies which already existed in Germany. All corporations and individual employers engaged in industry or trade are required to join one of the groups into which the Estate is divided and each group is further subdivided into sections. Each section and each group has a leader who is chosen either directly or indirectly by the minister for economic affairs. This leader is the representative of his group even for legal purposes and provides the government with a channel through which its direction of industrial activity can be made effective. But he has nothing to do with wages hours or other matters affecting the relations of employers and workers. These are handled by shop councils and labor trustees as will be explained a little later.

These arrangements are in harmony with the Nazi principle of coordination. Until 1933 German industry was conducted on a basis of free competition although the government did intervene at times to prevent the more obvious evils arising under the competitive system. This intervention lessened the waste which free competition often

THE TO-  
TALITARIAN  
IDEA.

ECONOMIC  
REORGANIZA-  
TION UNDER  
THE NAZIS

THE  
PRINCIPLE  
ON WHICH IT  
RESTS.

involves and put an end to some unfair business practices but of course it did not terminate the rivalry between competing industries each seeking its own profit and advantage. National socialism has no place in its philosophy for rivalry between different industrial groups or between different industrial classes such as employers and workers. To use a favorite Nazi metaphor they are all soldiers in the same army of national solidarity. Even as a soldier obeys his officers because he realizes that obedience is the only way to victory so the industrial army should obey the leaders who direct its efforts to the common good. Competition and class struggles have no place in such a scheme of things.

Heading this hierarchy of industrial leaders is the minister for economic affairs. It was expected in 1934 that the various groups within the Estate of Industry and Trade would be to a large extent self regulating but the ministry has assumed a steadily increasing control over all phases of German industrial life. By various forms of pressure it has compelled industries to merge or to change the nature of their output or their processes of production. Factories engaged in the production of essential supplies have been directed to move away from frontier locations (where they might be subject to air attacks) and to reestablish themselves in the interior.<sup>1</sup> Industrial corporations have been directed to combine and set up new factories particularly for the manufacture of experimental synthetic products with heavy losses involved. In 1934 Hitler ridiculed the Soviet idea of a planned economy and declared that natural selection with the survival of the fittest must be the guiding principle in business. But it was not long before Germany went Russia one better with her Four Year Plan which calls for sacrifices from both employers and workers in order that the Reich may be fully rearmed and made more nearly self sufficient in that length of time.

This Four Year Plan was inaugurated in 1936. It aims to procure the coordination of the entire economic resources of the Reich in such a way as to serve a twofold purpose: (1) to expedite the program of remilitarization and (2) to render the country independent of foreign supplies to such an extent that it can be virtually self sustaining in time of war. This goal of economic independence is now commonly designated as autarchy. In Germany the Four Year Plan

THE FOUR  
YEAR PLAN  
A.D.  
D. STRICK  
AUTARCHY

involves the curtailment of production along some lines in order that materials and labor may be available in other directions—for example to produce things which can be sold abroad and thus secure exchange for the purchase of essential raw materials. Less butter and more cannon is the way in which General Goering has expressed it. *Autarchy is also sought to be achieved under the Four Year Plan* by aggressively encouraging the production of synthetic motor fuel cotton fibres or cell wool artificial rubber or buna and all sorts of other commodities which in their natural forms would have to be imported. Considerable success has been attained along these lines but it is not probable that complete self sufficiency can be reached with so short a period as the present plan contemplates. The cost of these synthetic products moreover is higher than that of the natural commodities and the quality is usually inferior.

#### LABOR RELATIONS

The Nazi program gave a pledge to reduce unemployment. The government did not propose to do this however by stimulating the labor unions to collective bargaining with fewer hours of labor and more pay. On the contrary one of its first acts was to get rid of the existing labor unions as instruments of class warfare. Then a Law for the Organization of National Labor was put into effect (May 1934). This law establishes the rights and obligations of both employers and employees in all business concerns. It forbids labor to organize by itself and outlaws the right to strike. Likewise it forbids lockouts. But it also provides that in every business establishment the employer shall be recognized as the leader (*Betriebsführer*). As leader he is required (in all industries employing more than twenty persons) to have a confidential council (*Vertrauensrat*) chosen annually from among his workers to advise on working conditions and help him improve the efficiency of his business. Members of this council are nominated by the employer as leader but only in consultation with the leader of the Nazi cell organization among his workers. The list is then submitted to the workers who may reject any or all of the names. If an agreement cannot be reached the workers may appeal to the labor trustee for their district. These trustees are public officials appointed by the minister of labor. Each trustee in his own district is immediately responsible for the preservation of industrial peace and for the promotion of full cooperation between employer

LABOR  
RELATIONS  
UNDER THE  
NEW RÉGIME

and employed. He has authority to intervene and adjust wages or other working conditions when any serious disagreement arises between the employer and his workmen.

There is also in each district a court of social honor with a regular judge as chairman together with an employer and a representative worker as members. These courts hear complaints against employers or employees in cases where the public interest, and not merely the immediate interest of the two parties is involved. If an employer exploits his workers or offends their honor or if employees endanger the social peace by provocative behavior or undue interference with the management of the industry or make unfounded complaints to the district labor trustee, or if the workers divulge business secrets obtained at meetings of the confidential council it is provided that the trustee may refer the matter as a breach of social honor to the court. Finally, there is a tribunal in Berlin, a supreme economic court of social honor which has ultimate jurisdiction in these matters.

THE  
"COURTS OF  
HONOR."

When the trade unions were abolished in 1934 the employers associations were also dissolved. In place of both there was established a new organization, known as the Labor Front (*Arbeitsfront*). Its function is to represent both capital and labor including professional men and white collar workers. The Labor Front now includes nearly twenty five million members in other words virtually every German who is an employer, a professional man, or a worker employed otherwise than in agriculture. But it is not an organization for the protection of the workers against their employers. There are no labor organizations in Germany corresponding to the American Federation of Labor or the Committee for Industrial Organization. The National Socialist shop-cell organization (NSBO) is merely a link in the party chain.

THE LABOR  
FRONT

In 1935 a decree was issued setting forth a plan for giving employers and employees equal representation in a series of Labor Front councils—national, regional, district, and local. These are intended to link the Labor Front with the Estate of Industry and Trade. A department of the Labor Front organization has also been established to promote 'strength through joy' or bodily stamina through wholesome recreation after work hours, and to establish a "just social balance. All the recreational clubs and athletic associations of the Reich have been brought into this *Kraft durch Freude* plan. The goal is a vacation with pay for

"KRAFT DURCH  
FREUDE."

every worker and facilities for its proper enjoyment. The organization also promotes entertainments, outings, sports, games—every thing that may help to make the worker more efficient through a wise use of his leisure—and incidentally more contented with the new regime. It has enabled millions of workers to attend theatres, concerts, and other entertainments at nominal cost and has also made it possible for millions to take vacation trips at a minimum expense. The Labor Front also maintains a beauty of work department which has done much to improve working conditions in German factories and shops by providing better restrooms, sanitary facilities and sport fields, as well as by beautifying factory buildings and grounds.

Labor conscription was one of Hitler's remedies for unemployment when he took office, and it has been vigorously applied. Industries have been put under pressure to employ additional workers, whether needed or not. Men have replaced women in many industries, although women are now resuming their place in industry and business owing to a shortage in certain types of labor. Labor service camps have been established, with regular barracks, and all Aryan men, prior to their term of military service, have been ordered to work in them.<sup>1</sup> University students and all those desiring to enter certain professions, young women of well-to-do parents living at home,<sup>2</sup> and various other categories of youth have been required to spend a designated period at manual toil as farm helpers, or in labor camps under the labor conscription decrees. Young workers by the thousand have been compelled to give up their jobs to older men, betaking themselves to the farms and camps. Many young men have also been taken into the military and naval service, for the regular armed forces have been greatly increased, and thousands of other workers have been given employment in establishments which are fabricating war vessels, arms, ammunition, airplanes, tanks, and other implements connected with the rapid rearming of the Reich.<sup>3</sup>

Other factors have likewise helped to reduce the ranks of the un-

<sup>1</sup> A translation of the national service law (June 1935) and supplementary orders may be found in W. E. Rappard and others, *Survey Book: European Germentals* (New York 1937) Part IV, pp. 97-99.

<sup>2</sup> Labor service law has not been made compulsory for all young women.

<sup>3</sup> The armaments of the Reich now constitute a *Wermacht* in three divisions, the army, air force, and navy. The two last terms of compulsory service (*W. hepflicht*) has been reestablished.

employed in the Third Reich. The exodus of Jews, pacifists, aliens and other proscribed classes has created something of a vacuum to be filled by new workers. A gigantic program of public works has also absorbed many workers. In addition to the award of public contracts for the building industry, the construction of roads and waterways, the launching of reclamation schemes, private activity in all lines has been encouraged by subsidies, loans, and tax exemptions. Such industries, for example, as automobile factories have been stimulated by the abolition of taxes on private motor cars. Other market priming measures have been taken, moreover, such as subsidies to homeowners for repairing their property and marriage loans to young couples for the purchase of household furnishings. Double earnings by man and wife have been strongly discouraged in order to stretch employment over as many family units as possible. The migration of labor from rural areas to the cities, or from one city to another, has been put under restriction in order to prevent a local surplus of labor anywhere. Workers in certain trades have even been forbidden to leave one job for another if the local labor office finds that by so doing they may impair the efficiency of the enterprise with which they have been connected.

OTHER  
D VICES

Restrictions upon the free flow of labor are becoming steadily more comprehensive and more stringent. Farm workers have been warned (March, 1937) that any attempt to leave the land and engage in other occupations will be treated as desertion and punished accordingly. Certain areas, including Berlin and Hamburg, have been closed to all labor migration. In order to make the enforcement of these restrictions more manageable, every employee earning less than a thousand marks a month (which includes virtually all of them) is required to carry a labor passport containing a full recital of his education, his vocational training, and the various jobs that he has held. When a worker applies for a new job, he must submit this passport to his prospective employer. And employers in agriculture, as well as in certain industries, are authorized to withhold passports from workers who leave their jobs without proper cause. Thus the German Reich is well started on the road to a complete labor regimentation.

STABILIZING  
THE LABOR  
MARKET

By these and various other governmental actions, the number of unemployed in Germany has been greatly reduced. When Hitler came into power, there were six million persons registered as unem-

played in 1938 this total had been reduced to considerably less than a million most of whom were either unemployables or persons moving from one job to another This apparently striking achievement loses some of its impressiveness however when it is pointed out that persons in the labor camps or assigned by the authorities as virtually conscripted farm helpers are no longer counted as unemployed The same is also true of various other groups subsidized or supported by the government And much of the alleviation has been the result of government expenditures (for increasing the army fabricating implements of war building public works etc ) which cannot be continued indefinitely Nevertheless unemployment has been virtually eliminated in the Third Reich and there is an actual shortage of labor in many branches of German industry The total number of employed persons when Hitler came into office was less than thirteen millions in 1937 this had risen to more than seventeen millions

Unfortunately this reduction in unemployment has not been accompanied by a noticeable rise in wages or in the standard of living

#### THE WAGE LEVEL.

It has not been the policy of the government to encourage any general increase in the level of wages paid to industrial workers and the labor trustees who are appointed by the government have shared this point of view The attitude of the Nazi authorities in this matter is dictated by a feeling that any general rise in the wages of labor at the present juncture would have three detrimental effects upon their own general program It would greatly increase the cost of the government's rearmament enterprise In the second place it would increase the level of prices in Germany thereby curtailing exports stimulating imports producing a more strongly adverse balance of trade and diminishing Germany's capacity to buy raw materials abroad during the years before she attains her goal of autarchy Finally in the opinion of the Nazi leaders it would probably start a vicious circle of inflation within the Reich This objection has been very plainly stated by Hitler himself

Raise wages and you raise prices then you raise wages again after a while we would have to devalue the German mark and cheat the saving public then we would have to raise wages again and so on Do you believe that such actions would make the German people happier? Neither the wage nor the age rate is of major importance that matters



is the total production and the share of it which goes to every participant in production

The average yearly earnings of the German worker stated in monetary terms was less than two thousand marks in 1933. It was still under two thousand marks in 1936. On the other hand the hours of labor have been lengthened. In the summer of 1936 more than eighty per cent of the employed workers in Germany were covering a forty eight hour week or longer. Meanwhile the amounts deducted from each worker's wages for taxes, social insurance dues in the Labor Front, and more or less involuntary contributions to various other Nazi funds have considerably increased. Together these burdens are said to take about one fourth of the average worker's earnings.<sup>2</sup> To make matters worse the cost of living has risen since Hitler's advent to office notwithstanding the government's effort to keep prices down. While the price level for agricultural products has been permitted to rise somewhat the government's policy is to keep all other prices well pegged. To accomplish this a Commission of Prices has been appointed with comprehensive power to forbid price advances. But in spite of this the cost of living has risen more than the government's statistics indicate for these figures do not take into account the widespread evasions of the official price lists especially in the case of such foodstuffs as are scarce nor do they reckon with the deterioration in quality which has resulted in many cases from the effort to keep prices down.

What, then, has the German worker gained from the new order? He works longer hours, has gained no appreciable increase in wages, pays more for what he consumes, and has lost the right to strike. On the other hand he has seen unemployment virtually eliminated and jobs provided for every one who is able to work. Security for the worker such as it is has been established for the time being. He has been released from the haunting fear of losing his job. Vacations with pay have become general. Comfortable and attractive small dwellings have been built under the government's sponsorship for rental at low rates to workers in industry. A better environment for work has been pro-

WAGES AND  
THE COST OF  
LIVING

THE ORDER  
BALANCE  
SHEET

This summary was made by the International Labor Office in its bulletin of *Industrial and Labor Information*, July 27, 1936.

<sup>2</sup> John G. Caldwell, *Social Trends in the Third Reich* (Foreign Policy Reports, Vol. XIII, No. 4, May 1, 1937), p. 50.

vided and more ample opportunities for a worth while use of his leisure hours. Incidentally as the figures show he manages to consume a good deal more beer wine and tobacco than he did before Hitler came to the throne.

#### THE CONTROL OF FOREIGN TRADE

When the Nazi government came into power in 1933 Germany's exports exceeded her imports by a considerable margin although the excess had been reduced by the banking crisis of two years previously. The difference provided foreign exchange with which to pay German obligations abroad. But when other countries devalued their currencies while Germany did not, exports from the Reich rapidly declined and imports increased until an unfavorable balance resulted in 1934. It then became the policy of the government to discourage imports and to limit them, as far as possible to purchases from countries which would agree to buy an equivalent amount of goods from Germany. Agreements along this line were negotiated with a number of countries. Preference was given to raw materials and when these were imported the public authorities rationed them to the various industries.

This system of controlling imports has not only been continued but stiffened. It has gradually forced trade out of natural channels into purely artificial ones. Germany during recent years, has not been importing largely from countries where goods could be bought most cheaply but from countries with which quota agreements could be negotiated. Thus cotton importations from the United States have fallen off while purchases of Brazilian cotton have increased although the latter costs more and is not of equal quality. German industry has been considerably hampered by this rigid control and rationing of imported raw materials. The evils of the system have been accentuated moreover by the policy of giving a strong preference to those materials which have been needed in the manufacture of armaments and munitions.

In addition to this regimentation of imports every effort has been made to secure a favorable balance of trade by stimulating exports.

Liberal subsidies have been granted to exporters on the theory that such subventions constitute a sort of inverted tariff making good the disparity between German and foreign price levels. Funds for these subsidies have been ob-

THE BALANCE  
OF TRADE.

CONTROLLING  
AND RA  
TIONING  
IMPORTS.

SUBSIDIES TO  
EXPORTS.

tained by levying a tax on German industries based upon the amount of their domestic sales. The volume of exports has been increased by the subsidy plan but the cost is very large and some countries have resented this form of competition in their own markets. Yet Germany is in a situation where she must keep up her export trade for she requires a large volume of imports (such as metal ores oil wool hides etc.) and the only way to pay for them is by exporting goods of similar value. The Reich has no adequate gold reserve with which to liquidate an unfavorable trade balance. All this while ostensibly a problem in international economics is in reality a critical problem of governmental operation. For the Nazi government in order to provide the people with employment must keep the industries going and the industries need raw materials which have to be imported and imports have to be paid for—unless they can be exploited out of colonies or other dependent territories. Right here accordingly is a problem which gravely menaces the peace of the world.

#### AGRICULTURE

Agriculture has fared better than industry. Among all classes in Germany the farmers seem to have profited most from the new order. For the government's policy has been to raise the price level of agricultural products to a parity with those of industry and the measures taken for this purpose have been notably successful. German agriculture has been coordinated in all its branches under the *Reichsnährstand* or Agricultural Estate, an organization which includes in its membership all those who are concerned in the production and distribution of agricultural products. The organization has a leader at its head, does its work through sections and regional associations and has as its principal function the winning of the battle of production—in other words the making of Germany self-sufficient in fodder foodstuffs and various other products of the soil. It works in close cooperation with the minister of food and agriculture in the national government. Between them a complicated but apparently effective system of regulating prices and production is being maintained. A close control is kept over the supply of farm products and disturbing oscillations in prices are thereby prevented. By means of various offices all over the country the prices paid to farmers as well as to processors wholesalers and retailers of food products are strictly regulated. The Food Estate also

THE GOAL OF  
AUTARCHY IN  
FOODSTUFFS

confiscates the difference between foreign and domestic prices of agricultural commodities so that the latter level can be maintained without regard to importations from other countries

The German farmer has also been benefited by a reduction in interest rates on mortgages. Among Hitler's twenty five points there was a pledge to relieve German agriculture from slavery to interest but this promise has been redeemed in part only. Interest has been reduced but not eliminated and mortgage indebtedness has been somewhat scaled down. It is estimated that by these measures the interest burden on German agriculture has been reduced by about one fourth. The tax burden on the farmer has also been lessened by transferring a portion of it to the industrialist. The wages of agricultural labor have not appreciably risen and the government has helped the farmer by sending him subsidized helpers under the labor conscription plan. All in all he is better off than he used to be. And this has been the government's intention for it looks upon the agricultural classes as the very foundation of Germany's racial and economic solidarity.

The Nazi program also made various promises along the line of land nationalization and the breaking up of large rural estates but these pledges have not yet been entirely fulfilled. The government has not ventured to compel the large land owners of whom there are many in the Reich, to subdivide their estates into small farms and sell them. Many large landed proprietors however have voluntarily sold their holdings to the government which has undertaken resettlement projects upon the divided lands especially in East Prussia and Pomerania. On the other hand by the provisions of the hereditary farm law (1933) all farms of less than 300 acres which are capable of supporting a family have been converted into hereditary farms. About 700 000 farms have been so converted. The purpose is to stabilize agriculture by keeping farm families on their land generation after generation as in France. On the death of its owner a hereditary farm passes to his eldest son or nearest male relative who in turn assumes responsibility for the maintenance and education of his younger brothers and sisters until they become of age. Hereditary farms cannot be sold mortgaged divided or attached for debts. This arrangement has to a considerable extent placed a damper on speculation in agricultural land. On the other hand it has made it more difficult for farmers to obtain credit.

#### LAND TENURE AND RESET- TLEMENT

## THE NAZI ATTITUDE TOWARDS PRIVATE PROPERTY

Assurances have been repeatedly given that national socialism has no intention of abolishing private property or eliminating private initiative in business. Both are regarded as essential to maximum production. But both must be placed under governmental regulation which means that private property is respected, and private initiative fostered only to the extent that the government finds it desirable. Hence the government has not hesitated to reduce interest rates or to limit profits by decree. Business corporations are forbidden to pay dividends exceeding a certain rate; all surplus earnings must be invested in government bonds. Moreover the taxes on corporations have been raised to a point where the earning of even a reasonable rate of dividends has become difficult. While professing adherence to the principle of competition, moreover, the government has set up monopolies in certain lines of trade, particularly in those that have to do with imported and exported commodities. Private property remains in Germany, but under rigid public control. Private initiative remains in industry but under stringent public regulation.

Socialism has been traditionally defined as a system under which the agencies of production and distribution are taken over by the state. But the Nazi brand of socialism is not socialistic in that sense. The German government since 1933 has not taken over any of the great industries. It has not extended the field of government ownership. On the contrary it has sold to private individuals most of the shares in industries and banks which were acquired during the era of the Weimar Republic. Large government holdings in shipyards, machine industries, steel works, navigation companies, and banks have been sold during the past few years in order to obtain additional funds for public use. On the other hand the great iron works named for General Goering, which were created during 1937, present a substantial entrance into the field of direct government enterprise. For the most part, however, national socialism does not feel the necessity of having the state own property in order to control it. The same end, it has been found, can be reached by a sufficient regulation of private ownership. And if socialism ever comes in the United States it may be hazarded it will arrive in that form. You take my life, said Shylock, when you do take the means whereby I live. And you take a

THEORY AND  
PRACTICEPUBLIC  
OWNERSHIP

man's property when you take away all his freedom in the use of it

The extensive program of rearmament public works resettlement subsidies to industry encouragement of exports relief of unemploy-

ment labor camps and nation wide regulation has naturally required a vast expenditure of money To some extent these expenditures have been met by increasing taxes especially on corporation profits and incomes but in the main the money has been borrowed Much of it has been obtained by what virtually amounts to forced loans from the banks as well as from industries and organizations which happen to have surplus funds available The resources of savings banks and insurance companies have been almost entirely mobilized into government loans In this way the liquid resources of the German banks and other credit institutions have become greatly depleted but the stimulus given to production and incidentally to industrial profits by the rearmament program during the past few years has provided additional funds for governmental recapture It should be pointed out moreover that a good deal of what would ordinarily be government expenditure is defrayed by ancillary organizations such as the Estate of Industry and Trade the Food Estate and the Labor Front These organizations collect and spend at least two billion marks per year in dues Funds are also raised by numerous other bodies for public and semi public purposes by campaigns which are so intensive as to leave no one exempt from virtual compulsion

Forced loans and the steadily increasing levies upon private property naturally caused an exodus of capital from Germany People

having available funds transferred them into foreign investments But the government soon put an end to this The exportation of capital has been made severely punishable—the death penalty being prescribed in certain cases All foreign securities held in Germany have been ordered to be deposited in government banks If need be the government can direct these banks to sell the securities abroad and use the proceeds to pay for imports of raw materials The owners of the securities in that event would be required to take German government bonds in compensation There is reason to believe however that many foreign securities have been smuggled out of the country—chiefly across the Swiss border—and that capital continues to trickle out of the Reich despite even death penalty restrictions

## THE COORDINATION OF THE CHURCHES

According to the totalitarian theory religion and education as well as agriculture and industry must serve the state and be under its control. The citizen's soul as well as his body must be coordinated into the service of the commonwealth. Freedom of religious belief does not reconcile itself with any form of totalitarianism. Nazi or Fascist because it evokes loyalty to concepts which are above and beyond the state. It permits men to ally themselves with religious faiths which glorify peace and human brotherhood whereas force, combat, struggle and race hatred are the watchwords of the Nazi cause. And in the case of Catholic Christianity it links them to an ancient church which, from Canossa to Kulturkampf has never bowed the knee to Baal.

THE PLACE  
OF RELIGION  
IN THE  
TOTALITARIAN  
STATE

In Germany before the establishment of the Third Reich there were about thirty recognized Protestant denominations and the government was determined that these should be united into one national church under state supervision. But the various Protestant denominations as a way of forestalling this subordination to the political authorities combined themselves into a German evangelical church union and chose their own bishop to be at its head. This choice however did not suit the government, which turned to a rival group of Nazi Protestants organized under the aegis of the National Socialist party calling itself German Christians. Prominent in this group was a former army chaplain, a close friend of Hitler's and one of his principal advisers on church matters. This clergyman, Dr. Ludwig Müller by name, desired to become the head of German Protestantism and the government supported his ambition. Between the two organizations a controversy arose and it was finally decided that the questions at issue should be decided by vote of the entire church membership. In the weeks that preceded this referendum the government and the National Socialist party directed their energies and propaganda in Dr. Müller's favor as a result of which he became *Reichsbischof* or head of the combined Protestant churches.

THE PROTESTANT  
CHURCHES

But this referendum did not settle the issue. Opposition to the new bishop was organized within the church on various grounds and the conflict developed into a very bitter one. Attempts were made to stifle the indignity by dismissing hundreds of clergymen from their

pastorates or even arresting them, but the campaign of repression did not succeed. Finally matters came to such a pass that Hitler himself intervened in characteristic fashion. He deprived Reich Bishop Müller of all secular powers, placed the Protestant churches under direct state control, appointed to his cabinet a minister for church affairs and gave this minister full authority over the church in all matters of organization and discipline. Thus the evangelical churches of Germany have been subordinated to the government of the Reich, but they have not accepted this outcome cheerfully and the opposition is still active.<sup>1</sup> Pastors have gone to jail for the cause and are being regarded by the faithful as martyrs.

A similar and not yet concluded struggle to coordinate the Catholic Church in Germany has also been going on. Not long after it came into power the Nazi government sought to enter into a concordat or treaty with the Papal authorities which would more clearly define the place of the church in the Reich. And in due course a concordat was arranged with concessions on both sides. By its terms the Catholic Church in Germany was given the same recognition as the combined Protestant churches, with the same rights and privileges. Bishops and archbishops were to be named by the Pope as formerly, but only after consultation with the German government. They and the clergy were to keep themselves aloof from all political activities. Associations of Catholic laymen and church schools were to be left alone provided they maintained a similar aloofness.

But the concordat did not sufficiently coordinate. Controversies soon arose over the meaning of certain provisions, especially those relating to church schools and to such organizations as the Young Men's Catholic Association. The Nazi leaders were determined that all organizations of young Catholics should be absorbed into the Hitler Youth and that various church schools should be turned into agencies for the indoctrination of their pupils with the National Socialist philosophy. All this led to friction as well as to charges and countercharges of bad faith. Relations between Berlin and the Vatican became increasingly

<sup>1</sup> For a popular account of the struggle see G. N. Shuster, *Like Mighty Army* (New York, 1935); also Paul F. D. Glass, *God and the Germans* (Philadelphia, 1935).



strained. Today the situation is one of thinly veiled hostility on both sides. Encyclicals and other church pronouncements have berated the government, while the latter has retaliated by unearthing various scandals in which Catholic clergymen were alleged to be involved—for example the smuggling of money and securities out of the country in violation of the law. It is generally believed that sooner or later if the Nazis retain their power the Concordat of 1933 will be abrogated and the Catholic Church coordinated with the Reich as the other ecclesiastical organizations have been.

#### THE UNIFICATION OF CULTURE

The coordination of all the cultural organizations and activities of the Reich has been a primary aim of the Nazi government. The universities and the schools have been transformed into agencies for the indoctrination of German youth with the totalitarian philosophy. If the older generation cannot get accustomed to us, said Hitler, we will take their children away from them and rear them as needful for the state. There has been an occasional pogrom of books—the burning of volumes and pamphlets that have been written by non Aryans or that have been found deficient in a truly nationalist spirit. History and literature, science and art, have been revamped in their interpretations to serve this end. Special emphasis is everywhere placed upon the doctrine of Nordic superiority and the manifest destiny of the reconstructed fatherland. Learning and scholarship have been completely diverted into political channels. Academic freedom has been stigmatized as democratic nonsense. Teachers must think as the leader thinks. Knowledge and liberty of thought have parted company.

EDUCATION  
A. D.  
SCHOLARSHIP

The other agencies of public enlightenment have also had their efforts coordinated to a united and organized purpose. There is no longer a free press in Germany. In 1933 a ministry for public enlightenment and propaganda was established by decree and given power to deal with all measures of mental influence upon the nation. Save in the most exceptional instances there is no printed criticism of the Hitler government. The new regime is not yet entirely unified within itself and accordingly there are factional differences which still find themselves

THE PRESS IN  
GERMANY

For translation of this decree see W. E. Rappard and others, *Source Book on European Government* (New York, 1937) Part IV, pp. 21-23.

occasionally reflected in the newspapers. The authorities sometimes inspire critical comments in the newspapers for the purpose of proving to the world that the German press is free. But while there may be differences of opinion as to what the Nazi authorities ought to do there are none as to their being the right ones to do it. No person can be employed on a newspaper in an editorial capacity unless he is approved as acceptable by the Reich ministry of propaganda. Editors are required by law to withhold from publication everything which tends to weaken the will towards unity of the German nation—in other words everything which tends to impair the government's complete control of the national life. And newspapers can be suppressed at any time to prevent unsound competition according to the press decree of April 1935. This gives the government a life and death power over all of them.

In no way can one more vividly realize the changed conditions in German newspaperdom than by comparing the free A LOOK dom of the press clause of the Weimar constitution B CKWARD with Hitler's pronouncement on this subject. The republican constitution of 1919 provided that

Every German has the right within the limits of the general laws to express his opinion freely by word writing printed matter or picture or in any other manner. No circumstance arising out of his work or employment shall burden him in the exercise of this right, and no one shall discriminate against him if he makes use of it.<sup>1</sup>

But here is the way in which Hitler puts the matter

It is of primary interest to the state and nation to keep the people from falling into the clutches of unscrupulous ignorant and even malicious teachers. The effect is the state duty to supervise the education of the people and prevent any mischief. In particular it must maintain a close check upon the press for its influence upon the people is by far the strongest and most forceful of all since its activity is not ephemeral but continuous. Its immense influence results from the uniformity and constant repetition of its teaching. The state must not forget that here everywhere all means must serve a single end it must not be misled by prattle about the so-called freedom of the press.

No meetings for the discussion of public issues are permitted except under official supervision. All the channels of public informa-

tion have been brought under the immediate supervision of a chamber of culture which operates under the ministry for public enlightenment and propaganda. The radio is controlled by one section of this chamber, motion pictures are under the supervision of another. A third section controls all musical entertainments while a fourth keeps a watchful eye on painters and sculptors. Authors of books and pamphlets are also brought under supervision by a section of this all embracing organization. The rigid censorship of newspapers, magazines, radio broadcasting, theatres, motion pictures, books, art exhibits, and even concert halls is defended on the ground that it has become necessary for the combating of trash and obscenity, as well as to unite creative art in all fields under the leadership of the Reich.

PRO AGA DA  
AND UBLI  
NIGHTEN  
MENT THE  
CHAM R OF  
CULTURE

Of course it is difficult for any American to appreciate the vast moral influence which the Nazi government has been able to exert through its control of every channel through which the people may obtain ideas, information, opinions, or enlightenment. And any sign of recalcitrancy on the part of those who refuse to let their activities be coordinated, whether inside or outside the government, brings speedy retribution. Even in dealing with its own friends, when they are suspected of non-cooperation, the government has been quick and ruthless. One may recall as an example the blood-purge of June 1934, when Herr Hitler took the responsibility for shooting without trial General von Schleicher, a former chancellor, Captain Ernest Rohm, who had been one of his staunchest friends, and many others who were thought to be critical of the government's policy.

#### GERMANY AND THE OUTSIDE WORLD

National socialism in Germany has steadily become less socialist and more nationalist. The government of the Third Reich is not a socialist government at all, if one uses the term in its customary sense, that is, a government which takes over and operates the instrumentalities of production and distribution. Yet it claims to be socialist and may become so in time for the Labor Front is very influential and its pressure is in that direction. Meanwhile the energies of the government have been largely concentrated upon the gigantic problem of rearming the Reich and making it self-sufficient in time of war by completing the Four Year Plan. Its attitude toward the outside world has

THE GO LS  
O NAZ  
ORE GN  
OLIGY

been set forth to some extent in the official Nazi program, but more elaborately in Hitler's writings and speeches. One of Germany's avowed objectives—the absorption of Austria into the Reich, has already been accomplished. Another is the securing of territory to the east at the expense of Russia. If Germany could have the mineral wealth of the Urals and the agricultural resources of the Ukraine as Hitler truculently boasted on one occasion she would be able to fulfill her manifest destiny. A third external design is the abolition of the Polish corridor which now divides Prussia into two parts while a fourth is the restoration of the German colonies or the acquisition of equivalent overseas territory. The reduction of Czechoslovakia to the status of a vassal state may be looked upon as the fifth Hitler objective. In addition the original Nazi program called for a repudiation of all the burdensome provisions of the peace treaty—and this repudiation was made in dramatic fashion soon after Hitler came into office. During the republican era Germany had been admitted to membership in the League of Nations but in 1933 she withdrew and this action was subsequently endorsed by the German people at the polls.

Nevertheless the German government has repeatedly expressed its strong desire for the maintenance of European peace. In 1935 Hitler gave to the Reichstag a full exposition of his views on Germany's attitude toward the rest of the world and in this address he disavowed all imperialist designs.<sup>1</sup>

The remilitarization of the Reich he explained implied no threat to anyone. It was merely a logical outcome of the fact that other European countries had failed to disarm as they had promised to do by the terms of the Versailles Treaty. Germany's rearmament according to Hitler merely restored the equilibrium of power in Europe which had been upset to her disadvantage as a result of the World War. The actions of the German government, however, have not always squared with these professions of peaceful aspiration. Nazi propaganda has been actively carried on in the Near East, in South America—even in the United States. An understanding has been concluded with Japan and it is obviously aimed against Russia. In cooperation with Italy the German government has aided the insurgents in Spain. Demands for the restoration of the former German colonies have been reiterated from various official sources.

The Austro-Hungarian empire had been dismembered as the result of the peace treaties at the close of the World War. From its ruins in whole or in part six new states arose—Austria, Hungary, Poland, Czechoslovakia, Yugoslavia and Roumania. Austria in her post war emasculated form was left with an area smaller than that of Indiana and a population less than that of New York City. This population however was largely German in contrast to the polyglot racial structure of the old Austro-Hungarian empire. For twenty years the new state struggled to maintain a republican form of government which was considerably reorganized in 1934 but never succeeded in unifying public sentiment. A strong Nazi movement developed in Austria after Hitler's accession to power in Germany and the German government did what it could to encourage this development. Finally in the spring of 1938 a demand came from Berlin that the Austrian Nazis be given important places in the Vienna ministry.

THE  
AUSTRIAN  
ANSCHLUS

Being too weak to refuse this demand the Austrian government acceded and at once the new Nazi ministers took not only a share in the government but control of it. Declaring that civil war in Austria was imminent they invited German intervention. The German government quickly responded by sending troops into Austria; the existing government was abolished and the territory annexed to the Reich.<sup>1</sup> To endow his actions with a color of legality Hitler at once ordered that a plebiscite be held in Austria and at this popular election the *fait accompli* was overwhelmingly ratified. Under the circumstances the Austrian voters had no alternative.

Austria as an independent nation passed off the map of Europe after having occupied a place there for nearly a thousand years. The German leaders thereupon proceeded to coordinate the political and economic organization of this new territory with their own land. A central European axis has been established from the Baltic to the Mediterranean from Danzig to Palermo. What Hitler's next move will be whether in the direction of Czechoslovakia or elsewhere it would be folly to predict. Predictions in politics as Francis Bacon once said should be confined to winter talk by the fireside.

The Treaty of Versailles deprived Germany of all her colonies

<sup>1</sup> For a discussion of the events leading to the Austrian absorption see M. Margaret Ball, *Peace War Germany Austria Relations The Anschluss Movement 1916-1936* (Stanford University 1937).

without compensation. They were converted for the most part into mandated territories and placed under the administration of those Allied powers to which the League of Nations chose to entrust them. It should be explained perhaps that instead of actually dividing the spoils of victory among the victors the framers of the Versailles Treaty provided that these territories should be given to the League of Nations and should by that body be administered through mandates given to individual governments. Each mandatory makes an annual report to the League.

Under this arrangement the greater portion of German East Africa was mandated to Great Britain but a share was placed under Belgian tutelage and a small area was given to Portugal. German Southwest Africa went under mandate to a British dominion the Union of South Africa. France obtained a mandate for the greater portion of the Cameroons but a smaller part was delegated to British supervision. A large remaining area was given to France in full ownership. Togoland was divided into two portions one mandated to Great Britain and the other to France. In the Pacific the former German islands were apportioned under mandates to Great Britain, Australia, New Zealand, and Japan.

It is argued that through the loss of her colonies Germany has been left with too small a life space for her population.<sup>1</sup> While the Third Reich is making every effort to extract from its own area what is needed for reasonable economic security the available resources do not entirely suffice. Such security might perhaps be obtained by commercial agreements with other countries but the growth of economic nationalism throughout the world is making it steadily more difficult to obtain favorable trade agreements anywhere. And even if such agreements could be made they might not prove dependable in time of crisis. So the allotment of colonial space to Germany it is said affords the only permanent and satisfactory solution for existing difficulties.

The trouble with this solution is first that all the former German colonies put together would not furnish the Third Reich with any considerable part of her raw material requirements and second

See the pamphlet by Dr. Hjalmar Schacht, President of the Reichsbank, entitled *Why Germany Requires Colonies* (Berlin 1936).

that the restoration of these colonies would entail sacrifices which the mandate holding nations and dominions will not make unless they have to do it. The former German colonies it is true do not now belong to them but to the League of Nations. On the other hand the present mandatory powers realize that if the League goes to pieces the mandated territories will revert to them. It is conceivable that through negotiations and mutual concessions Germany might be given back some of her former colonial possessions in the interest of world peace but the atmosphere of Europe will have to clear considerably before this can come to pass. It is also conceivable although not probable that the Nazi government might press its demand for the restoration of the German colonies to the point of war—not probable because Germany has more to gain by keeping on good terms with Great Britain. When war comes it is likely to have its inception in some other quarter. There are many issues in Europe more explosive than the German colonial question.

THE  
DIFFICULTIES  
INVOLVED

In conclusion it may be repeated by way of summary that two words provide a key to the cardinal principles on which the totalitarian Third Reich is based. The first is Coordination (*Gleichschaltung*) the second is Leadership (*Führerschaft*). By the former is meant the constraining of every human activity into line with the policies of the sovereign authority. It implies the end of competition in social purposes such as exists in democratic countries. Party controversies freedom of individual belief and opinion the right to go one's own way—they are all cancelled out. The unification of all his efforts towards a single goal is the obligation of every citizen. By leadership is meant the flow of all authority from the top downwards rather than from the bottom up. Theodore Roosevelt once said that the difference between a leader and a boss is that the leader leads and the boss drives. On that basis the German *Führerschaft* might be translated into a shorter and uglier English word than leadership. For it connotes the idea that power does not emanate from the people but from one who has arrogated supreme authority to himself with the aid of his party cohorts. And this idea goes right down the line into all the subdivisions of government as well as into agriculture industry commerce religion education and every other branch of German life. There is no human activity in the Third Reich which does not have its leader and the mission of this leader is not to lead but to drive.

THE NAZI  
PHILOSOPHY

Under this arrangement the individual citizen becomes a single drop of oil upon the vast mechanism of state supremacy and unification. His soul mind and will are dissolved into the personality of the state, of which its leader is the expression. Was it for such that the spirit of man came into being?

In addition to the books mentioned at the close of the two preceding chapters mention may be made of H. A. Phillips *Germany Today and Tomorrow* (New York, 1935) Mildred S. Wertheimer *Germany under Hitler* (World Affairs Pamphlet No. 8 New York, 1935) Wickham Steed *Hitler Whence and Whither* (London 1934) F. L. Schuman *The Nazi Dictatorship* (2nd edition New York, 1936) A. J. Zurcher *The Experiment in Democracy in Central Europe* (New York, 1933) H. L. Childs editor *Propaganda and Dictatorship* (Princeton 1936) C. S. Macfarland *The New Church and the New Germany* (New York, 1934) Konrad Heiden *Hitler A Biography* (New York, 1936) Stephen H. Roberts *The House that Hitler Built* (New York, 1938) and Charles Cunningham, *Germany Today and Tomorrow* (London 1936)

On the economic developments under Hitler the most comprehensive source of facts and figures is E. C. Donaldson Rawlins *Economic Conditions in Germany to March 1936* (London 1936) but mention should also be made of two recent Foreign Policy Association Reports by John C. deWilde entitled *The German Economic Dilemma* (March 1 1937) and *Social Trends in the Third Reich* (May 1 1937) also Hermann Levy *Industrial Germany a Study of Its Monopoly Organizations and Their Control by the State* (Cambridge England, 1935) John B. Holt, *German Agricultural Policy 1918-1934* (Chapel Hill, N. C. 1935) C. S. R. Harris *Germany's Foreign Indebtedness* (London 1935) H. S. Ellis, *German Monetary Theory 1928-1933* (Cambridge Mass. 1934) Vaso Trivanovitch, *Economic Development of Germany under National Socialism* (New York, National Industrial Conference Board 1937) and M. de Saint Jean *La politique économique et financière du Troisième Reich* (Paris 1936)

The colonial ambitions of the Third Reich are explained in G. K. Johannsen and H. H. Kraft *Germany's Colonial Problem* (London 1937) and in Dr Hjalmar Schacht's pamphlet on *Why Germany Requires Colonies* (Berlin 1936)

Translations of decrees and other documents are included in W. E. Rappard and others *Survey Book European Governments* (New York, 1937) as well as in Norman L. Hill and Harold W. Stoke *The Background of European Governments* (New York 1935)

An up-to-date survey of *The Nazi Government of Germany* by J. K. Pollock, is now in course of publication



## CHAPTER XXXVII

### ITALY AND THE FASCIST REVOLUTION

The relations between the state and the individual are completely reversed by the fascist doctrine. Instead of the old democratic formula "society for the individual," we have the new formula "individuals for society" — *Alf. d. Rocco*

Buttressed on the north by the Alps and ribbed throughout its course by the Apennines, the kingdom of Italy thrusts itself into the Mediterranean. Or, to use Petrarch's classic aphorism

*il bel paese  
che Appennin parte il mar a c' da e l'Alpe*

No country in Europe has had a longer and more interesting political history. It contains two regions which differ widely in their physical characteristics, namely, the northern or continental region which includes Lombardy, Piedmont, Tuscany, and Venetia, and the southern or peninsular division, which comprises not only Rome and its adjacent territories, but the old kingdom of Naples and the islands of Sardinia and Sicily. Napoleon Bonaparte used to say, "Italy is too long." The entire kingdom comprises about 90,000 square miles, which is slightly more than the area of Kansas. But the population of Italy exceeds 42,000,000, which is more than that of all the American states west of the Mississippi.

THE KINGDOM  
OF ITALY

The earliest history of this peninsula is known only through the classic legends. It was then inhabited by a variety of tribes. At some time prior to 700 B. C. came the founding of Rome and in due course the sway of this city was extended in all directions until it eventually spread over most of the then known world. Thus Italy became and for several centuries remained a world empire, the center of world culture and civilization. All roads led to the Eternal City, a proud metropolis with a population of over a million.

ITS EARLY  
HISTORY

Then ensued a long period of decline in Roman power and its ultimate collapse in the fifth Christian century. The barbarians from the north came down into Italy, overran it, sacked its cities, wrecked its government, and turned the land into a desolation. Next followed the

periods of Gothic Byzantine Lombard and Carolingian domination—each with its own vicissitudes. Much could be written on the history of this lurid interval of five centuries from 500 to 1000 A.D. but it would not be appropriate here. It is enough to say that banditry and disorder got the upper hand in spite of all that either the civil or ecclesiastical authorities could do.

With the beginning of the eleventh century signs of a revival appeared. The cities, particularly in the northern part of the peninsula, began once more to grow and flourish. Princes and dukes, as well as communes and republics, were able to stabilize their power in a host of small states and to maintain a semblance of discipline although they were frequently at war with one another. By the close of the middle ages the time had become ripe for the welding of these jarring areas into a unified nation, but unhappily no unification was achieved. On the contrary this civil warfare paved the way for an era of foreign domination which proved to be long continued. England and France attained the goal of unity. Italy did not. She remained a geographical expression down to the later half of the nineteenth century. Local jealousies, regionalism, foreign control, and a lack of national consciousness contributed to make it so.

The beginnings of progress toward the unification of Italy date from the years 1796–1799 when Napoleon Bonaparte invaded the land with his ever victorious armies and brought the whole territory under his control. Thereupon, in true Napoleonic fashion, he combined many of the small states into a Cisalpine Republic, and finally united the entire peninsula under French tutelage. To all of it he extended the Code Napoleon and the French administrative system. In this way he stamped upon Italian political and legal institutions an impress which they bear to this day. But this unification of Italy proved to be brief for it went to pieces when the Napoleonic empire collapsed. Nevertheless it gave the Italian people a new vision and revived among them their old consciousness of a common nationality. Thus it was the rise of a Bonaparte that first created among the Italians, as among the Germans, a determination to be united under a government of their own. And curiously enough it was the fall of another Bonaparte (1870) that in both cases enabled this unification to be consummated.

In 1814–1815 the Congress of Vienna met to realign the bound

aries of Europe which the long wars had so rudely disturbed. One of the most difficult questions confronting the Congress was what to do with Italy—and as it happened Italy had no friends at this Congress. Austria for her own advantage and security desired that Italy should remain disunited and weak. It was likewise Austria's ambition to dominate all the Italian states which lay within reach of her own frontier. So Italy was once more dismembered. Austria recovered Venetia and the duchy of Milan. Parma, Modena, Tuscany, Naples and various other states were placed under foreign rulers. The Pope was confirmed in his possession of Rome and the Papal States. The kingdom of Sardinia including Savoy and Piedmont (with the addition of Genoa) was the only one left with an Italian dynasty. Thus Italy became once again a land of shreds and patches as it had been before the Bonapartist invasions.

ITALY AFTER  
APOLEON  
ALL

But the Congress of Vienna although it rearranged boundaries could not stifle the sentiment for unity and independence which had been aroused among the people. Bonaparte after his exile to St. Helena was enough of a statesman to foresee that no fiat of a world-congress would suffice to keep the various states of Italy from gravitating together. Italy's unity of language, customs and literature he wrote must sooner or later bring all her inhabitants under one government. This prediction was ultimately fulfilled although its fulfillment was long delayed. The nationalist sentiment attained its earliest strength in the kingdom of Sardinia which, as has been said, included Piedmont and Savoy on the mainland.

THE MOVEMENT  
OF ITALIAN  
UNITY LED  
SARDINIA

No plan of union, however, could hope to be successful unless based upon liberalism—and there was no political liberalism in any part of Italy during the first half of the nineteenth century. Even the kingdom of Sardinia, Piedmont and Savoy was without a constitution. It was not until 1848 that its king, Charles Albert, granted his people a charter of political liberties known as the *Statuto fondamentale*. This act of liberalism enraged the Austrians and led to a war which cost Charles Albert his throne but his son and successor refused to abrogate the constitution of 1848 although strong pressure was placed upon him to do so.<sup>1</sup>

THE STATUTO  
OF 1848

<sup>1</sup> Constitutions were also granted in some of the other states notably in the kingdom of Naples but everywhere except in Sardinia, Piedmont they were evicted during the years following 1848.

With Sardinia Piedmont under a constitutional monarch the way was cleared for the beginnings of unity. And for the next twenty years the rise of Italy to nationhood is the story of this one state's expansion over all the rest. In its earlier stages the movement had a capable and far sighted leader Count Cavour who became prime minister of Sardinia Piedmont in 1852. He was an ardent nationalist and had in mind for Italy exactly the same goal that Bismarck sought for Germany ten years later. Like Bismarck too he was convinced that no scheme of Italian unity would be permitted by Austria. Austria therefore must first be dealt with on the battlefield and ousted from all share in Italian affairs. But Austria was a great military power in these days and it would have been suicidal for Sardinia Piedmont to make war on the Hapsburg empire unaided and alone.

So Cavour proceeded to seek allies among the other European powers. In 1855 he joined England and France in their joint (Crimean) war against Russia—not because Sardinia had any direct interest in the question at issue but because Cavour desired to put France under moral obligations to his own country. By this and other well timed diplomatic manoeuvres he finally drew France into a definite agreement by which Napoleon III undertook to combine with him in driving Austria from Italian soil. Together the two allies assailed Austria in 1859 and won victories at Magenta and Solferino but before the Austrians had been completely dislodged Napoleon III weakened and decided to conclude a peace by which only half the bargain was fulfilled. Lombardy was taken from Austria and joined with Sardinia Piedmont but the Austrians were permitted to keep Venetia.<sup>1</sup>

This demarche on the part of the French was a great disappointment to Cavour and to all the partisans of Italian unification but it did not bring the nationalist movement to an end. On the contrary it gave new virility to the cause which now aimed at nothing short of a kingdom unified from tip to toe with Victor Emmanuel the King of Sardinia Piedmont Lombardy as monarch of all Italy. Notable progress in this direction was made when various small states (Parma Modena and Tuscany) ousted their foreign rulers and declared for

In turn for French assistance Sardinia Piedmont was required to hand over Nice and Savoy to France.

annexation Under the leadership of Garibaldi both Naples and Sicily revolted in 1860 expelled the Bourbon dynasty and voted likewise In this way the program of unification made headway until it was virtually complete with the exception of Venetia (which Austria retained) and Rome with the adjacent Papal States much reduced in size which were still under the rule of the Vatican

GARIBOLDI  
AND THE  
UNIFICATION

Cavour did not live to see the completion of his work, which was delayed for another decade by reason of various obstacles Austria could not be ousted from Venetia by the armies of Italy alone it was necessary to wait until the Austrians were in trouble elsewhere This opportunity arrived in 1866 and the Italians seized it without hesitation While the Prussians were overwhelming Austria at Sadowa the Italian armies went into Venetia and redeemed this portion of their homeland They would have annexed Rome and the Papal States also had it not been for the intervention of Napoleon III who now reappeared in Italian politics this time as the protector of the Pope's temporal rulership From 1866 to 1870 a small French army guarded Rome against the Italians but in the latter year it was withdrawn for service in the Franco-Prussian war and the Italians followed promptly on the heels of the evacuation The Italian capital was thereupon transferred from Florence to Rome The temporal power of the Papacy came to an end for more than fifty years only to be reestablished in a modified form by a new agreement which was concluded between the Vatican and the Italian government in 1929 Meanwhile an attempt was made to adjust the relations between the two by a Law of the Papal Guarantees which the Italian parliament enacted in 1871 but which the Papacy never recognized<sup>1</sup>

THE  
COMPLETION  
OF UNIFICATION  
1866-1870

The expansion of Sardinia-Piedmont into the kingdom of Italy did not involve the framing of a new constitution The Statute of 1848 was merely extended stage by stage to the annexed territories Ostensibly this constitution still remains in effect, although it has been amended out of all recognition during recent years by the Fascist government of Italy The process of amendment is so simple that this has not proved difficult When the Statute of 1848 was proclaimed it contained no provision

THE PRESENT  
CONSTITUTION  
OF ITALY

<sup>1</sup> For discussion of the Roman question including the Law of the Guarantees and the Concordat of 1929 see *blu* pp. 73-79

for amendment. This silence was forthwith construed to mean that it could be virtually amended at any time by merely passing an ordinary law. The leaders of the government and the courts have accepted and acted upon this understanding namely that the written constitution of Italy like the unwritten constitution of Great Britain can be changed by an act of parliament.

For more than sixty years however amendments were relatively infrequent despite the ease with which they could be made. Both parliamentarians and the people went on the principle that the provisions of the Statuto should not be radically changed except for some urgent reason. Accordingly there developed a general tradition that the Italian parliament would not pass any law in conflict with the constitution (and hence amending its provisions) until after the issue had been threshed out in an election campaign and virtually decided by popular vote.

The Statuto of 1848 was a very short document and general in its terms consequently a great deal of detail was left to be filled in by laws, decrees and usages. With the expansion of the kingdom and the increased complexity of its government this constitution was naturally much elaborated but its essential features underwent no great change from 1848 to 1922. It gave Italy a political system that seemed at times to be sadly lacking in executive stability but there was no serious demand for a thorough overhauling of the fundamental law until after the close of the World War.

On the advent to power of Benito Mussolini in 1922 however this situation began to undergo rapid and drastic changes. The old ministerial instability disappeared. One dominant political party the Fascist party went into power and stayed there. Many essential features of the old constitution were cast off one after another until the government of Italy today bears only a faint resemblance to that of the pre-war years. The Italian political revolution of the past fifteen years has been extensive. It has retained the monarchical form of government but has transformed the basis of parliamentary representation the system of lawmaking the structure of local administration the relations of church and state the party system and to some extent the administration of justice. The Italian government of today rests upon a new political philosophy.

## ITALIAN POLITICS BEFORE THE FASCIST ERA

In the case of most governments it is appropriate to describe the political framework first and the party system afterwards. This is because party organization usually adapts itself to the mechanism of government. But in the case of Italy the order has to be reversed for there the frame of government has been adapted to the exigencies of the party system. Fascism is the pivotal fact in contemporary Italian government. It is therefore essential before discussing monarchs, ministers or parliaments to explain what fascism is, how it came upon the scene, and what it has done to the Italian constitution. This in turn necessitates a survey of Italian political development before, during and immediately after the great world conflict.

Modern Italian politics began with the Statuto, although that document contained no hint that political parties would have any share in the government. Cavour, who became prime minister in 1852, was not a strong party man. He was a liberal with conservative inclinations. During the period of his premiership (1852-1861) Cavour built up a great body of political followers. They were not held together by party ties but by personal devotion to him and by their zeal for the unification of Italy. The great statesman's death in June 1861 shattered one of these bonds, and with the final occupation of Rome in 1870 the other went also. Thereupon the country divided into two camps commonly known as the Right (Conservatives) and the Left (Liberals). The former drew their chief strength from the north, the latter from the south. The Right managed to secure the lion's share of the credit which went with the achievement of Italian unity and for some years after 1870 was able to dominate the government. But its rule was too reactionary to suit the masses of the people, and in 1876 it was replaced by the Left which was able to hold the reins of power without interruption for twenty years.

During this period there were several prime ministers for both the Right and the Left proceeded to split into smaller groups, and although the groups forming the Left were consistently the stronger they could not stay united behind a single ministry for any considerable length of time. The most notable of Italy's prime ministers during the earlier portion of this period was Depretis, a shrewd political manipulator who managed to

FASCISM THE  
BASIS OF THE  
NEW STATE

PARTY  
POLITICS AND  
POLITICIANS  
BEFORE THE  
WAR

CRISPI AND  
DEPRETIS

get himself counted among the winners after each ministerial crisis. During the later years of the nineteenth century especially during the era 1891-1896 the outstanding figure in Italian politics was Francesco Crispi, a leader of great vigor and capacity who unhappily ran into difficulties which were not altogether of his own making. An Italian military expedition against Abyssinia met with a serious defeat in 1896 and Crispi was made the scapegoat. With his departure from office the parties of the Left surrendered for the moment their long lease of power.

The Right came back to office in 1896 after its long rest in the shades of opposition but did not remain in office very long. There

GIOLITTI THE  
OPPORTUNIST seemed to be no place in Italian politics for avowedly conservative *blocchi*—as coalitions are called in the

land of the Caesars. So ministries were formed, defeated, re-formed, and defeated again. This process continued in tedious reiteration year after year. Italy rivalled France in her flittings of cabinets in and out. Only one Italian statesman managed to keep himself consistently to the forefront during these troublesome times. This was Giovanni Giolitti, foremost among the leaders of the Left, an opportunist if ever there was one, and a politician of marvellous dexterity in the making of coalitions. Although it is often said that he never deigned to face any great problem in a statesmanlike way, nevertheless much of Italy's early social legislation was enacted under his leadership or with his support. At various times Giolitti had to meet not only the opposition of the conservative groups but that of the Socialists as well, for he declined to go as far as the latter desired. That he was able to do so much is a tribute to his skill in the handling of politicians. He professed democratic sentiments but did not have any fixed political principles and was ready to favor any party provided that by so doing he could carry on a little longer. Yet he was marvellously successful in politics. Giolitti held the post of prime minister during a considerable part of the period 1900-1915 and when not in power he was usually close to the edge of it.

Meanwhile a Socialist party had been coming to the front as in the other countries of Continental Europe. In due course the Socialists

RISE OF THE  
SOCIALISTS. formulated a definite program, with demands for universal suffrage, reduction of armaments, tariff reduction, welfare legislation, and social insurance. By reason of this program, together with the relative impotence of the older parties, the Socialists made steady gains during the first decade of the



twentieth century and eventually controlled a substantial group in the lower chamber of the Italian parliament

At this juncture (1915) Italy entered the World War. The Socialists for the most part were opposed to this step but the government could not withstand the allurements and compensations which were held out to Italy in the event of an Allied victory. She was to have large territorial acquisitions chiefly at the expense of Austria-Hungary. Italy's part in the war however proved to be extremely burdensome to the national treasury and the operations of the Italian army were by no means so successful as had been expected.

ITALY IN  
THE WAR.

During the war period the Italian Socialists gave unenthusiastic support to the government as in other countries and took no unfair advantage of the national emergency although some extremists among them were believed at one time to be tampering with the morale of the army. A serious Italian reverse on the Piave was thought to have been caused by their pacifist propaganda. At any rate when the war was over the Socialist party emerged with a more radical program, and some of them, fired by the success of revolutions in Russia and in Germany, became avowed Communists. At the Socialist Congress of 1919 the party officially adopted a program of a communist character and declared its allegiance to the Third (Moscow) International. This program demanded abolition of the capitalist system and called for the introduction of soviet rule. Under normal conditions a proposal so drastic would not have made a strong appeal to the Italian people but conditions were chaotic and the non-Socialist parties were unable to offer a united opposition or to agree on a common program.

THE  
SOCIALISTS  
WENT TO THE  
LEFT

The whole country moreover was in a disillusioned and resentful mood because Italy seemed to have profited so little from the war. The masses of the people had been led to expect large accessions of territory at the close of the conflict and the modest awards made to Italy by the Peace Conference were a profound disappointment. There was general expectation that Italy would obtain the whole of the Dalmatian coast together with the control of Albania thus turning the Adriatic into an Italian lake. Many Italians also looked for the acquisition of territories in the Near East at the expense of Turkey and in Africa at the expense of Germany. But these high hopes were not

THE  
NATIONAL  
DISILLUSION-  
MENT

realized and the popular wrath recoiled on those who had taken the country into the war. To make matters worse the government faced huge annual deficits in these immediate post war years the currency depreciated the cost of living went up and there was much unemployment.

The Socialists profited from this widespread disillusionment and discontent. They now had a group in the Chamber of Deputies large enough to force concessions from the ministry and they used their power to the full. Strikes and disorders became more numerous and more serious but the hand of the government seemed paralyzed. The Socialists with their Marxist program were not strong enough to rule Italy themselves but they had enough power to prevent anyone else from doing it effectively. With a divided and vacillating ministry at the helm the economic situation became steadily worse during 1920. Agrarian disorders resulted from the confiscation of land by peasants in the southern part of the country. Workers began to seize factories and to organize them on the Russian plan. Soviet agents urged the movement on. For a time it looked as though Italy was on the verge of becoming a dictatorship of the proletariat but the more moderate element in the Socialist party held back and the opportunity was lost.

#### THE FASCIST REVOLUTION

It was not until after the danger of revolution had passed that fascism stepped into the breach. The origin of the Fascists goes back to the early days of the war when Italy was still a neutral. At that time organizations were formed for the purpose of urging the country into the war on the side of England, France and Russia—*fasci interventisti* they were called. They were not anti Socialist except insofar as they blamed the Socialists among others for Italy's delay in entering the World War. And when Italy joined the Allies in 1915 the reason for their existence disappeared. But they kept their association alive and after the armistice in 1918 they were reorganized under a new name *fasci di combattimento* with Benito Mussolini at their head.

This remarkable man was born in 1883 the son of a village blacksmith. He became a school teacher but drifted into journalism and in 1912 became editor of *Avanti* official organ of the Italian Socialist party. As such he was a revolutionary Socialist. After the World War broke out

THE RAPID  
DRIFT  
TOWARD  
CHAOS

FASCISM COMES  
TO THE  
RESCUE

MUSCOLINI  
HIS EARLY  
CAREER

however Mussolini began to advocate Italian intervention on the sides of the Allies. For this the Socialists dismissed him from his editorship. Thereupon he moved away from his old associates although not from their program. When Italy entered the war he enrolled in the ranks and served until he was wounded.

After the war was over Mussolini issued a call for ex service men to join the Union of Combat (*fasci di combattimento*) with the idea of creating an organization strong enough to help in the solution of Italy's post war problems. Many of them responded and when disorder became widespread in 1920 large numbers of conservative Italians flocked into the Fascist membership also. From a revolutionary Socialist Mussolini thus became leader of the reactionaries. Branches of the organization were established all over the country. Groups of younger Fascists clad in black shirts sallied forth to stem the rising tide of communism. Meanwhile the Giolitti government sat inactive letting the two sides fight it out in the streets which they did with a good many casualties.

HIS ORGANIZATION OF THE BLACK SHIRTS

Fascism soon got the upper hand in this guerrilla civil warfare. The split in the Socialist ranks, the weakness of the government, the desire of the people for a restoration of law and order, the financing of fascism by the large industrial corporations—these factors contributed to its success. The organization presently evolved into a political party, the Fascist party, with a platform into which a strong dose of conservatism had been injected. Those who had joined it to put down communism now continued their support in order to see the work of reconstruction completed. Feeling himself strong enough to issue an ultimatum to the government, Mussolini in 1922 demanded that a new ministry with Fascist representation be placed in power or a general election held. While the government was trying to make up its mind, the call went forth for a Fascist march on Rome. From all corners of the kingdom, in response to Mussolini's summons, the black shirts converged upon the Eternal City and demanded that governmental authority be surrendered into their hands.

THE ULTIMATUM TO THE GOVERNMENT AND THE MARCH ON ROME

The ministry capitulated. Mussolini was installed as prime minister with a coalition cabinet of his own choosing. Then he warned the Chamber of Deputies that if it did not support the new administration it would be dissolved. The Chamber hastened to do as it was bidden.

It gave assent to the measures laid before it notably to the electoral law of 1923. For the first time in fifty years Italy was under the rule of a prime minister who did not have to placate any element among the deputies. Then ensued a gradual revamping of the whole government. With a stern hand Mussolini proceeded to cut down governmental expenses and to balance the budget. He dismissed public officials in large numbers but replaced them in many cases with trusted Fascists. Nor did he scruple to crush opposition and stifle criticism wherever they showed themselves. From the outset he used the whole power of the government to curb the opposition press and to liquidate what was left of communist leadership.

Then Mussolini proceeded to secure a Chamber of Deputies that could be counted upon to give no trouble at critical moments. Under

the provisions of a new electoral law (1923) it was arranged that the people should vote for parties not for candidates. The ballots were to contain party symbols

not names and the voters were merely to choose between these symbols. Then when the votes in the whole kingdom were counted the party obtaining the largest vote was to receive two thirds of all the seats in the Chamber the successful candidates to be taken in order from a list previously prepared by the party. The minority parties were to have seats allotted to them in proportion to the number of votes polled. The idea was to make sure that some one political party would be assured of a safe majority in the Chamber thus putting an end to bloc government and ministerial instability.

The new electoral law received its first test at a general election in 1924. The Fascist party as was intended stood highest at the polls

and secured two thirds of the seats under this system of unproportional representation. But the other parties Liberals and Socialists formed a vigorous minority and their criticism of the government on the

floor of the Chamber once more became no exception than the Fascist leaders felt inclined to tolerate. Repressive measures were used to silence them. A prominent Socialist deputy Matteotti was abducted and taken for a ride in orthodox Chicago fashion. The affair created a great commotion and the non Fascist members of the Chamber (known as the Aventine bloc) withdrew from its sessions. But no attempt was made to coax them back the Chamber went along with its work as a virtually undiluted Fascist body. For a time

Mussolini took most of the ministerial posts for himself then when his political reforms had been accomplished he distributed some of them among his chief lieutenants retaining for himself the posts of prime minister (head of the government) and several other portfolios

### THE CORPORATIVE STATE

With full political power placed in their hands the Fascists now proceeded to transform Italy into a corporative state It was part of their program adopted in 1922 that the economic organization of the country should be reconstructed While retaining the capitalistic system and the institution of private property this program provided for the establishment of corporations which would bring employers and workers together thus manifesting the national solidarity and increasing the productive capacity of the nation Immediately after Mussolini's advent to power therefore the government proceeded to break up the Italian trade unions which were under Socialist domination In their place syndicates of workers were organized under Fascist leadership Similar organizations were developed among employers and professional men Ultimately the two were brought together through their respective representatives in bodies known as corporations

A CORPORATIVE STATE ESTABLISHED

This general arrangement was developed in detail regularized and given a firm legal basis by the Charter of Labor (1927) a famous document of thirty articles<sup>1</sup> An Italian declaration of the rights of man it professes to be based on the principle that the government is the guardian of all economic rights whether of employers or workers The Italian nation it begins is an organism whose aim whose life and whose means of action are superior to those of the individuals who constitute it Labor in all its forms intellectual technical and manual is declared to be a social obligation The right of both employers and workers to organize is recognized but only under the control of the state and in such manner as the government prescribes No organization of employers or workers except it be officially recognized is permitted to function in the interests of its members and no organization is to be given this official recognition if it is affiliated with any international body This rules out all communist and socialist

THE CHARTER OF LABOR (1927)

<sup>1</sup> An English translation may be found in W. E. Rappard and others, *Survival of the Fittest* (New York, 1937) Part III pp. 44-50.

organizations and in fact gives the government power to suppress any organization which is not fascist in its sympathies

The primary unit in the Fascist state is not the individual citizen as in a democratic commonwealth but a syndicate (*syndicato*) or occupational union of persons having a common economic interest. Employers who are engaged in each line of industry group themselves into a local syndicate and workers in each branch of industry do likewise but the syndicates of workers and employers are always separate. There are no mixed syndicates. Each syndicate is organized for all kindred industries or vocations in a given area usually a city or district. Syndicates of employers and workers are separately grouped into federations on a regional or provincial basis and these again are grouped into one great confederations each of which covers broadly related industries. Representatives of employers and of workers come together from their respective federations in one of these corporations which are made up by combining the syndical associations or federations of a particular industry both employers and workers together.

Syndicates of workers make contracts with syndicates of employers. These contracts regulate such matters as the hours and conditions of labor wages and vacations they are binding on all employers and workers engaged in the industry whether members of the syndicates or not. The syndicates moreover are given the right to exact from all employers or workers as the case may be an annual contribution not exceeding one day's pay roll in the case of employers and one day's pay in the case of workers. This fee is payable whether they are enrolled as members of the syndicates or not. It is collected by the government through a check off system applied to pay rolls. Ten per cent of the total goes to support the ministry of corporations.<sup>1</sup> Any Italian citizen eighteen years of age or over if he be of good moral character and loyal to the Fascist philosophy may join a syndicate. But his economic relations will be determined by it whether he joins or not.

Labor controversies are settled in the first instance by conference between the officials of the syndicates concerned. Each syndicate bargains with its *vis a vis* through representatives who are ostensibly of their own choosing. Failing agreement by this method the issues

are referred to the federation in which the industry is included. If the controversy cannot be adjusted by negotiation it goes to a labor tribunal of which there is one attached to each of the sixteen regular Italian courts of appeal. It is the purpose of the Charter of Labor to promote the national solidarity, prevent all interference with the normal course of production and provide agencies for the peaceful adjustment of industrial disputes: all strikes and lockouts are therefore prohibited.

THE AD-  
JUSTMENT  
OF INDUS-  
TRIAL  
DISPUTES

As for the organization of the syndicates it is required that each shall have a president and a secretary. These officers are chosen as the constitution of the syndicate may provide and are paid from the obligatory dues. But no choice of a president or secretary is valid until approved by the governmental authorities in Rome. Each syndicate also has a board of directors but the board may be dissolved at any time by the government and its functions given to the president. Or the government may place a special commissioner in charge. As a measure of last resort the recognition given to any syndicate may be withdrawn. The same provisions apply in a general way to the federations and the confederations.

ORGANIZATION  
AND  
OFFICERS

It should be repeated that employers and workers do not come together in any of the above organizations. They stay apart. They are first brought to sit together in joint corporations or

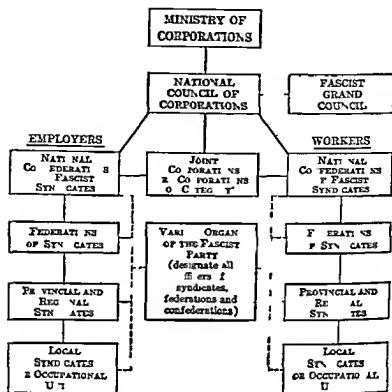
corporations of category of which there are now twenty two. These joint corporations (established in 1934) are composed of representative employers, workers and technicians in such trades as cereal farming, fruit growing, forestry, fisheries, grape culture and wine making, water, gas and electricity supply, the chemical trades, paper and printing, the building trades, the metal industries, glass and pottery, arts and professions, the clothing trade, theatres and public entertainments, hotels and restaurants, sea and air transport, internal communication and so on. The function of these joint corporations is to adjust the larger issues in dispute between employers and workers, to regulate wages, hours of labor, conditions of employment, and production costs within their respective categories, to supervise employment bureaus, to promote education and to serve the government in an advisory capacity on all industrial questions.

THE CORPO-  
RATIO S.

THEIR  
FUNCTION

Finally there is the national council of corporations which is made

## THE ITALIAN CORPORATIVE ORGANIZATION



up of all the members of the joint corporations numbering more than eight hundred in all. This body now serves as the grand economic council of Italy, charged with the consideration of all important questions of economic policy. It is the general staff of the nation's productive forces. According to an announcement made by Mussolini in 1937 it will presently supplant the Chamber of Deputies. But its work is done under the inspiration of the minister of corporations and none of its decisions have any validity until he gives his approval. On important issues where there are political implications moreover the Fascist grand council (a body which will be described a little later) must be consulted.

This elaborate series of organizations, which dominates the economic life of Italy and forms the basis of the political structure may be more clearly understood by referring to the accompanying chart.

Now although the corporative state is a somewhat complicated

THE NATIONAL COUNCIL OF CORPORATIONS



affair on paper it is not so intricate in practice. The syndical associations, federations and confederations are managed by a few hand-picked officers who virtually determine their decisions. All these officers are dependable Fascists and indeed active workers in the Fascist party cause. Employers are represented by employers of course, but the workers are frequently represented by non-workers. In any event the Fascist party through its officials and groups of officials dominates the whole hierarchy of economic associations. And the Fascist government may intervene and settle controversies without reference to any of the regular organizations in case of emergency. What the whole machinery amounts to is the adjustment of industrial controversies by small groups of politicians who are supposed to represent all the interests involved but who are in fact named by the government or by the Fascist party leaders—which is the same thing—and who think primarily in terms of politics. In other words, the plan is one of compulsory arbitration by a political party to serve its own purposes under color of promoting industrial peace.

In 1928 this elaborate syndical machinery became the basis for a new electoral law which now regulates the election of members in the Chamber of Deputies. As will be explained in the next chapter, this law provides that nominations shall be made by the various confederations and then revised by the Fascist grand council. The lists are in fact prepared by the officers of each body who would not be officers unless they were acceptable to the government. Together the confederations send in their nominations; then the grand council revises it, but in doing so may add names that were not on any federation list. The revised list is thereupon submitted to the whole electorate at a general election for acceptance or rejection. It is a referendum, not an election. The voters merely mark a *Yes* or *No*.

It has sometimes been said that communism is a dictatorship of the worker while fascism is a dictatorship of the employer. But like most snappy epigrams this one is not true. Fascism does not contemplate that any class, either workers or employers, rich or poor, classes or masses shall be permitted to rule. On the contrary its first postulate is a blunt denial that any class, group or interest has the right to govern. The government must be supreme, not only in the political but in the economic life of the nation, and it should be so constituted as to give every class and

THE THEORY  
AND THE  
FACTS

THE  
DICTATORSHIP  
AS THE BASIS  
OF THE  
ELECTORATE

THE BASIC  
POSTULATE OF  
FASCISM

every interest its fair share of representation thus putting an end to class antagonism and substituting fair adjudication for the rule of force and violence in economic life

### THE FASCIST PHILOSOPHY

The old Italian parliamentary system prior to 1922 was based on the glorification of the individual citizen. It made him the end in government and looked upon the state as merely a means to this end. In the Fascist philosophy this relation between the state and its citizens is completely reversed. The state not the individual is the end. Democracy looks upon the state as an aggregate of living individuals. Fascism regards the state as the recapitulating unity of an indefinite series of generations.<sup>1</sup> In other words the Fascists do not agree with the dictum of Tom Paine and Thomas Jefferson that a nation belongs to the people who live in it at any given moment. The living generation according to Fascist doctrine merely holds it as a heritage and a trust. The best interests of the state may therefore be different from those of the people who compose it at any given time. Individual citizens come into the social unity where they abide their destined hour and go their way. But the social unity endures and is always identical with itself. It guards the welfare and promotes the advantage of the individual citizen to the extent that these coincide with the interests of society and the state as a whole. Individual rights are recognized only insofar as they are implied in the rights of the state.

Thus the orientation of fascism differs from that of liberalism, utilitarianism, socialism and communism. Liberalism regards freedom of the individual as the chief end of government. Utilitarianism seeks the highest good of the greatest number among individual citizens. Socialism exalts the right of the individual to economic justice. Communism recognizes no rights but those of the individuals who make up the proletariat. The trouble with all these cults according to the Fascists is that they emphasize the rights of individuals or groups of individuals. Fascism, by way of contrast to them all, does not try to solve political

A highly vlogistic exposition of Fascist philosophy may be found in Alfredo Rocco *The Political Doctrine of Fascism* a pamphlet issued by the Carnegie Endowment for International Peace (New York 1926) No. 223. See also J. S. Barnes *The Universal Aspects of Fascism* (London 1927) and the chapter on Fascism in W. W. Willoughby *The Ethical Basis of Political Authority* (New York, 1930).

or economic problems by deferring to individual rights interests or ambitions. Such rights interests and ambitions if they exist at all are merely means to an end.

Fascism therefore holds that democracy is false gospel. Here is their argument. The democratic ideal regards the government as a mere prize to be captured by some one of the contending factions among the people and then to be used by these captors as an instrument for serving their own factional advantage at the expense of the national well being. It places the general interest at the mercy of any group however selfish that happens to obtain support from a transient majority of the electorate. Democracy is a scheme of government based on organized selfishness which inevitably results in class warfare economic disorganization and national weakness. It begins by asserting the divinity of the vox populi and then proceeds to identify this divine voice with the uproar and clamor which politicians and lobbyists manufacture for their own benefit. Fascism according to its apologists insists that the government be entrusted to men who are capable of rising above their own private interests and of realizing the aspirations of the social collectivity considered in its unity and in its relation to the past and the future. It rejects the doctrine of popular sovereignty for state sovereignty. For government by the whole people it substitutes government by the chosen few who are asserted to be capable of ignoring their own private interests in favor of the higher demands of society.

FASCISM AND  
POPULAR  
SOVEREIGNTY

Above all things the Fascists contend that their plan of government abolishes class antagonisms which democracy has never been able to do. Many centuries ago the state abolished personal retaliation in individual quarrels making itself the arbiter of all such controversies but giving individuals the right to come into court with their respective claims. Fascism demands that the same be done with groups of individuals with the same result—the word that has self defense be replaced by public adjudication. To present their respective claims effectively the classes should be organized hence the creation of the syndicates and federations. Having been thus organized and provided with a process of adjudication all groups among the people are forbidden to take the law into their own hands just as individual citizens have been. They must refer their controversies to the established authorities for settlement—that is to the corporations and the courts.

THE SUPREME  
STATE

There is a good deal to be said for this philosophy if one could believe it sincere and if it were being exemplified in practice by the present Italian government. The Charter of Labor has a truly utopian ring but its actual result has been to strengthen enormously the hold which the Fascist party leaders maintain on the life of the nation. Industrial peace is greatly to be desired but may not the extinction of free government be too high a price to pay for it? And the weakest link in the whole claim of Fascist argument is the lack of any standard whereby to measure and interpret the interests of the nation as a whole. Thus being the case it seems inevitable that the party in power whatever it may be will go on maintaining itself by force yet with a sincere belief that its own perpetuation in office is absolutely essential to the national well being.

At any rate the Fascists have a great admiration for Machiavelli, and justifiably so because this Italian political philosopher regarded the strength and security of government as the chief end of man.

Let a ruler therefore do whatever he can to preserve his own life and perpetuate his own supremacy the means which he uses shall be thought honorable and be commended by everybody because the people are always taken by the appearance and event of things and the greatest part of the world consists of the people those few who are wise taking hold when the multitude has nothing else to rely upon.

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**PRE WAR ITALIAN GOVERNMENT** For the political history of Italy before the World War reference may be made to Bolton King *History of Italian Unity 1814-1871* (2 vols. London 1899) W. R. Thayer *The Dawn of Italian Independence* (2 vols. New York 1893) and his *Life and Times of Cavour* (2 vols. Boston 1911) J. A. R. Marriot *Makers of Modern Italy A pole to Mussolini* (new edition New York 1931) Petro Orsi *Courage and the Making of Modern Italy 1810-1861* (London 1914) Bolton King and T. Okey *Italy Today* (London 1911) W. K. Wallace *Greater Italy* (New York 1917) A. Solmi *The Making of Modern Italy* (New York 1925) Benadetto Croce *Italy from 1871 to 1915* (London 1929) G. M. Underwood *Unity of Italy* (London 1912) and G. M. Trevelyan *A Short History of the Italian People* (London 1920). A full bibliography may be found in the *Cambidge Modern History* Vol. XI pp. 908-913.

**FASCISM AND THE CORPORATIVE STATE** On the Fascist revolution and the Fascist philosophy a large number of publications have appeared during the past ten years. General surveys are given in H. R. Spence *Government and*

Niccolò Machiavelli *The Prince* Chap. xiii.

*Politics of Italy* (New York, 1932) and R. L. Buell editor *Governments in Europe* (revised and enlarged edition New York, 1937) pp 36-140. Among books in English which will be found useful by the general reader are H. W. Schneider *The Fascist Government of Italy* (New York, 1936) J. S. Barnes *The Universal Aspects of Fascism* (London 1927) Herman Finer *Mussolini's Italy* (New York, 1935) Paul Einzig *The Economic Foundations of Fascism* (London 1935) William Edwin *Fascism at Work* (London 1934) Mario Missiroli *What Italy Owe to Mussolini* (Rome 1937) Fausto Piugliani, *The Italian Corporative State* (London 1933) Alexander Robertson *Mussolini and the New Italy* (New York, 1928) E. W. Hullinor *The New Fascist State* (London 1928) and Gaetano Salvemini *Under the Axe of Fascism* (New York, 1936) which is a highly critical discussion. A volume by H. Arthur Steiner on *Government Fascist Italy* (New York, 1937) should also be mentioned.

Special attention should also be called to three books by Mussolini himself namely *The Doctrine of Fascism* (Rome 1935) *The Corporate State* (Florence 1936) and his *Autobiography* of which several editions have been published since it appeared in 1928.

## CHAPTER XXXVIII

### ITALIAN GOVERNMENT TODAY

*L'Italia è fatta — a bisogna fare gli Italiani — Massimo d'Alelio*

Italy remains a limited monarchy with succession to the throne vested in the House of Savoy. This succession is regulated in accordance with the mediaeval rule known as the Salic Law by which none but male heirs to the throne are recognized. In case of any controversy relating to the succession the advice of the Fascist grand council, the supreme organ of the Fascist party, must be sought. The present Italian monarch is Victor Emmanuel III, the great grandson of Charles Albert who granted the Statuto in 1848. He has been on the throne since 1900. The chief executive power belongs to the crown, acting on the advice of the prime minister, a post occupied by Signor Mussolini since 1922. The king is titular commander in chief of the armed forces; all appointments to civil office are made in his name, and his person, according to the constitution, is sacred and inviolable.

Under the constitution of 1848 provision was made for a council of ministers, appointed by the king, and every royal order had to be countersigned by one of these ministers before it became valid. There was a prime minister or president of the council, but he held no position of supremacy over the other ministers. As in France he was merely the chief in a group of colleagues. Sometimes indeed the prime minister was outranked in influence by individual members of his cabinet and was dependent upon them for his continuance in office. The old ministers had formed a cabinet as a department, serving as the head of a department. They went out of office on an adverse vote in the Chamber of Deputies.

In 1925 this arrangement was supplanted by a new one.<sup>1</sup> The prime minister was exalted above the other ministers and given the

<sup>1</sup> Law of December 24, 1925. An English translation printed by W. E. R. Pppard and others, *Source Book European Government* (New York, 1937), Part III, pp. 11-13.

title head of the government (*Capo del Governo*) The new provision stipulates that the head of the government is appointed by the king and responsible to him for the general policy of the government. He chooses the other ministers assigns their functions directs their work, and coordinates their activities The special nature of his position is indicated by a clause which provides heavy penalties for any attempted assault upon the head of the government this being a provision which in other monarchical countries is applied only to members of the royal house

THE NEW  
HEAD OF  
THE GOVERNMENT

#### THE MINISTRY

Under the old constitution as has been explained the prime minister was responsible to the Italian parliament According to the amendment of 1925 the head of the government is responsible only to the king And in any event responsibility to parliament would mean little or nothing under present conditions because the constitution now provides that no question can be placed on the calendar of either the Senate or the Chamber save by permission from the head of the government That provision of itself precludes the discussion of any matter on which an adverse vote might be forthcoming To make assurance doubly sure it is further stipulated that if either chamber rejects a measure the head of the government may require it to be reconsidered at the expiration of three months in which case it must be voted on without discussion and by secret ballot And if one of the chambers defeats a bill, the head of the government may nevertheless require that it be submitted to the other chamber and voted upon there Finally laws can be promulgated as decrees if need be and do not need the approval of parliament

IS RESPONSIBILITY AND POWERS

The Italian ministry now contains fourteen posts but not fourteen members For in addition to being prime minister and head of the government Mussolini is also minister of the interior of war of the navy and of aviation Other departments are headed by ministers of foreign affairs finance education agriculture justice colonies communications propaganda, public works and corporations Besides holding several portfolios the head of the government has ensured himself a dominating influence in the council of ministers by insisting on the principle of rotation In other words he has rarely allowed a minister to remain

THE  
MINISTRY

very long as the head of any department but has shifted his ministers at frequent intervals. By this means he has accomplished two purposes. First, he has been able to give the versatility and resourcefulness of his lieutenants a thorough try out and second he has prevented any possible rival from gaining the popularity and prestige which might result from long and successful tenure of a high ministerial post. Each ministerial department is provided with one or more undersecretaries or assistant ministers and it is with the aid of these that the prime minister manages to serve as head of several departments at the same time. Both ministers and undersecretaries are transferred or dismissed whenever the prime minister so recommends and he need give no reasons for his recommendations.

In addition to the fourteen regular ministerial departments there are various independent administrative agencies of the Italian government. One of these is the council of state which has five sections. Three of these sections serve as advisory boards to the ministry while the other two form a high court for the adjudication of controversies in the field of administrative law.<sup>1</sup> In Italy the attorney general who serves as legal adviser of the government, is not a member of the ministry. His office is a separate administrative agency. So is the court of accounts, which is not a court at all but an auditor general's office. In addition however it performs the function of registering royal decrees. There are various other separate administrative agencies of the Italian national government but these are the more important ones.

The routine work of administration under the general direction of the ministers is performed by a large staff of bureau chiefs and other subordinate officials and employees who constitute the Italian civil service.<sup>2</sup> They are of all gradations and for nearly fifty years admission to this service except in the highest posts has been on a competitive basis although political influence has never been entirely eliminated as a factor in selection. Promotions have also been made on the basis of merit and seniority. The Fascist revolution has not changed this system except to provide that all officials and employees must be persons of good civil moral and political conduct—the last of these three requirements making

<sup>1</sup> See *ibid.* pp. 711-712.

<sup>2</sup> See the chapter on The Italian Civil Service by Aldo Lussignea, in Leonard D. White, ed., *The Civil Service in the Modern State* (Chicago, 1930) pp. 301-339.



it essential that they be Fascists in good standing. In accordance with this stipulation there has been a general ousting of all non Fascists from the public service.

#### THE FASCIST GRAND COUNCIL

Mention has been made of the Fascist grand council which has now been elevated into a regular organ of Italian government and possesses more power than any other body. The head of the government is president of this council. Membership is of three categories: a few life members; certain members *ex officio*; and a larger number of members who are appointed for an unlimited period of time. The *ex officio* members include such functionaries as the ministers, the presidents of the Senate and the Chamber, the president of the Italian Academy, the presidents of the various confederations, and the higher officials of the Fascist party, all of whom remain members for the duration of their respective offices. The appointive members are named by the head of the government for a three year term and are reeligible. They must be persons who have rendered special service to the nation or to the Fascist revolution.

COMPOSITION  
OF THE  
COUNCIL

The Fascist grand council has three functions, one of which is connected with the organization and work of the Fascist party as such while the other two have to do with the nomination of deputies. In the first place the council names the chief officials of the party. These consist of a secretary general (who serves also as secretary of the council) and a national directory of nine other members. This national directory is the executive organ of the party. Second, the council receives the lists of nominations for membership in the Chamber of Deputies as submitted by the various confederations of employers and workers, syndicates and selects from these lists the candidates whose names are submitted to the voters for approval.<sup>1</sup> Third, the council serves as an advisory body to the crown and to the head of the government. It presents to the king nominations for membership in the ministry. It is consulted on all questions relating to changes in the constitution, in the succession to the throne, in the structure of the government, in the organization of the confederations and syndicates, and in the relations between church and state.

ITS  
FUNCTION

This combination of partisan and official functions may seem in

<sup>1</sup> See below pp. 702-703.

congruous but it is quite in keeping with the totalitarian principle on which the present Italian government rests. The Anglo-Saxon idea that the best way to keep the government responsible is to build up a vigorous opposition party—that idea has no place in the Italian political philosophy of today. On the contrary the Fascist reconstruction has proceeded on the principle that one political party should take all the power and assume all the responsibility. This party organization is injected into the structure of government. Government and party are identified.<sup>1</sup> In Great Britain and in America on the other hand the political parties have no constitutional basis. They are not clothed with any official status.

#### THE ITALIAN PARLIAMENT

The Italian parliament still consists of two branches—the Senate and the Chamber of Deputies although Mussolini announced in 1937 that the Chamber of Deputies would presently be abolished and its place taken by the national council of corporations. The Senate as established by the constitution of 1848 was made up of a few hereditary members (princes of the Italian royal house) but mainly of senators appointed by the crown. These appointive senators were selected from various categories of citizens—for example the higher dignitaries of the church persons who had held important offices in the government or high rank in the army or navy members of the Royal Academies and others who by their service or eminent merit had done honor to their country. All were named for life terms.

Relatively little change has been made in the organization of the Senate as a result of the Fascist revolution. In 1925 an amending law provided that governors of Italian colonies should be included within the categories of persons eligible for appointment. Otherwise the rules of eligibility remain as before. Appointments are made by the crown on recommendation from the head of the government. The present membership is over 400 and a considerable majority of these are senators who have re-

<sup>1</sup> According to its own constitution the Fascist party is designated as a militia in the service of the Fascist state. This constitution is printed in W. E. Rappard and others *Survival of Government* (New York, 1937) Part III pp. 17-31.

ceived their appointments since Mussolini came to power. It is therefore safely pro-Fascist. Those senators who are not in sympathy with the government stay away from the sessions.

Ostensibly the Italian Senate has always had equal legislative power with the Chamber of Deputies except for the customary provision that money bills must originate in the Chamber. But in actuality its powers have been far from equal.

ITS POWERS

Before the Fascist revolution the Senate had become a secondary chamber in every sense of the word. Ministries did not resign on an adverse senatorial vote; most measures of all kinds originated in the Chamber; and although the Senate sometimes amended these bills it almost invariably gave way when the Chamber insisted. Although the Senate contained, as it does today, a fine array of brains, it did not assume an important share in the moulding of public policy during the years which preceded the advent of Mussolini to power.

During the past fifteen years, however, the Italian Senate has gained somewhat in prestige. This is not because its powers have been increased but because the authority and influence of the Chamber have been diminished. The Senate has gained some effulgence through the complete eclipse of the lower Chamber. In the old days when the Chamber of Deputies rejected a bill, the Senate never got a chance to debate it at all. But it is now provided that if the Chamber rejects a measure, the head of the government may nevertheless require it to be sent to the Senate and voted upon there. And if the vote is favorable he may then transmit it to the Chamber for reconsideration without debate and for decision by secret ballot.

ITS GAIN IN PRESTIGE

So long as the present regime continues it is profitless to discuss the relative importance of the two chambers which make up the Italian parliament. The head of the government controls them both. There is no serious opposition to him in either. All important issues of national policy are discussed by the Fascist grand council and decided by it before they get to either house of parliament. In the British House of Commons there is a rule that no proposal to spend money can be considered unless it has been recommended by the ministry in the name of the crown. In the Italian parliament the principle of executive sponsorship is carried much farther, the rule being that no subject can be placed on the orders of the day in either chamber without the approval of the head of the government. All measures which com-

LEGISLATION  
ON BUSINESS  
AND DEBATE

before the Italian parliament are in effect government measures for without ministerial approval no bill gets on the calendar at all

The Chamber of Deputies has undergone a general overhauling alike in its organization powers, and procedure during the past fifteen years Prior to the World War it was a body of more than 500 members each of whom was chosen from a single member district for a maximum term of five years The suffrage included virtually all male Italian citizens twenty-one years of age or over and the voting was by secret ballot In general the plan was much like that which is used in electing members of the French Chamber today If no candidate received a majority at the first election a second polling was held a week later Both elections were held on Sunday

This electoral system resulted in the submerging of national issues by purely local and personal ones Small districts elected small men

The voter's horizon was narrow and that of the deputy conformed to it Elections turned on personalities rather than on programs and the deputy went to Rome with far more interest in getting favors for his own district than in promoting the national well being Party organization became chaotic and party discipline a myth it was a case of every deputy for himself with groups and blocs forming and dissolving at frequent intervals

In an attempt to improve this situation the electoral system was changed in 1919 to provide for larger districts each electing several

deputies according to the principles of proportional representation The change seemed to promise an improvement but before the merits of the plan could be

fully determined the Fascists obtained control of the government and replaced it (1923) by a scheme of their own In the belief that many of Italy's political difficulties had resulted from the multiplicity of parties and that proportional representation would merely accentuate this party demoralization the Fascists decided to set up a plan of unproportional representation as has been already mentioned

This scheme of unproportional representation was unique, and although it has now been abandoned it deserves a word of description as one of the many bizarre experiments in the art of government which European countries have tried since the close of the war The law of 1923 as has been said provided that the entire kingdom

should constitute a single electoral district. Each political party on the eve of an election was to nominate its list of candidates for the country as a whole. These names were then to be published for the information of the voters but were not to be placed on the ballots. Instead the ballots would contain only the symbols of the various parties: for example, the Fascist symbol (the Roman fasces and axe) and the symbol of the Popular party (such as a cross on a shield). The voter was to mark his ballot by drawing a line through the symbol of the party for which he desired to have his vote recorded.

THE SCHEME  
OF "PRO-  
PORTIONAL  
REPRESENTA-  
TION"

The most striking feature of this scheme, however, was the unproportional method of counting the ballots. The law provided that the party receiving the largest number of votes in the country as a whole, even though falling short of a majority, should be awarded at least two thirds of the seats in the Chamber of Deputies; the names of the elected candidates being taken serially from the top of the party's national list. The other parties were to take the remaining seats in proportion to the number of votes cast for each of them. At the election of 1924 the Fascist list obtained about forty per cent of the total vote and was given 356 seats out of about 500, thus ensuring the party a safe and unified majority in the Chamber.

HOW IT  
WORKED

The purpose of this plan was to put an end to the practice of government by blocs and coalitions. It aimed to provide a guarantee that, however an election might turn out, some one political party would obtain a clear majority in the Chamber. And this party's control would then be so secure that there could be no more shuffling of responsibility, no more non-fulfillment of party pledges, and no more stalling of the governmental machinery. In a general way the plan achieved its purpose. It gave the Fascists control of the Chamber although they did not gain a majority at the polls.

ITS PURPOSE

But the system of unproportional representation was highly unpopular with the non-Fascist elements among the people. To them it was merely a nation-wide gerrymander. They saw no good reason why forty per cent of the voters should elect more than sixty-six per cent of the deputies. Nor was the plan altogether satisfactory to Mussolini and his supporters. It gave them an ample majority in the Chamber, but it also brought into that body a sullen and irreconcilable minority, armed with real

ITS PO-  
LITICAL

grievances and determined to provide the ministry with every ounce of trouble that they could manufacture. Then when these minority members found their obstruction overborne by ministerial repression most of them withdrew from the sessions altogether.

The Fascist leaders thereupon decided that not merely a two thirds majority but complete unanimity was what Italy needed in

THE NEW  
ELECTORAL  
LAW OF 1928

her Chamber of Deputies. They were also of the belief that the nomination and election of deputies should be linked with the hierarchy of syndicates and

confederations which had now been set up thus giving adequate representation to the organized productive forces of the nation. Accordingly in 1928 the electoral procedure was once more transformed. Under this latest plan the membership of the Chamber has been reduced to 400. When the time for an election arrives each of

THE LISTS OF  
CANDIDATES.

the national confederations prepares a list of candidates its quota being fixed by law. Thus one national confederation is entitled to name twelve per

cent of the candidates another national confederation ten per cent, and so on. Eight hundred names are proposed in this way. But only the high officers of the confederations (and they are government appointees) take any part in this process of selecting candidates. They are con-oked in Rome for the purpose. In addition various cultural and educational associations are entitled to propose additional candidates.

These names go to the secretary of the Fascist grand council who arranges them in alphabetical order and submits them to the whole

REVISION OF  
THE LISTS  
THE FASCIST  
GRAND  
COUNCIL.

council for revision. The council may strike out any names on the list or may insert new names. In this revision the list of about 1 000 names is cut down to 400. It is then published in the *Official Gazette* and posted on

billboards throughout the country under the direction of the minister of the interior. As the original list is not made public it is impossible to tell how many names have been inserted by the grand council on its own initiative.

The election takes place on the third Sunday after the official publication of the revised list of candidates. The voters do not mark their

THE  
ELECTION

ballots for candidates. They merely vote *Yes* or *No* on the question: "Do you approve the list of deputies nominated by the Fascist grand council?" If the

affirmative votes constitute a majority the whole 400 deputies are

elected and take their seats. They sit for Italy at large, not for any part of it. Ostensibly they are the choice of the whole electorate. Their responsibility is to the entire kingdom, not to some small district or constituency.

But what if a majority at the polls should give its decision in the negative? In that case the electoral law provides for a second election which must be held within a stated time. This second polling differs from the first in that nominations may be made by any association or organization which has a membership of at least 5,000 registered voters, but this freedom can never mean much because no associations are permitted to be organized without the government's consent. At this second election, as at the first, the voter marks his ballot for an entire list of candidates, not for individuals. And the list which obtains the largest number of votes is entitled to take three-fourths of the seats, while the remainder are distributed in proportion to the number of votes which each minority list has obtained. The names are taken in order from the head of each list as officially announced before the election.

Two elections have been held under this new plan—in 1929 and 1934. On both occasions the list approved by the Fascist grand council was endorsed at the polls by an overwhelming vote.<sup>1</sup> It could hardly have been otherwise, for the ballots are printed on transparent paper and the Fascist militia, who guard the polls, can see how each person votes. The new Chamber of Deputies, elected in this way, is a very diversified body including within its membership representatives of every important economic, social, and cultural element in the country—but having no party divisions within its fold. Every one of its 400 members is a loyal Fascist. In its composition, therefore, the present Italian Chamber is unique. In most countries the legislature is politically diversified, but its members are drawn from a relatively narrow economic and social range. Lawyers, as a rule, form the largest single element, with business men, journalists, landowners, and professional politicians taking most of the remaining seats. This is true of Congress, the House of Commons, and the French Chamber of Deputies. But in the Italian Chamber, by way of contrast, the economic and social

A CO D  
ECTI N  
W IE  
N CESSARY

MAKE U O  
THE PRE NT  
HAM

<sup>1</sup> At the election of 1929 the Fascist list obtained over 98% of the total and at the election of 1934 the figure was 99.8%. The opposition to this list, lectured by 15,000 votes, fell far below the 10,000,000

diversification is such that it leaves no class without its quota of representatives<sup>1</sup>

Thus is carried into operation the Fascist doctrine that since the chief task of a government is to promote the economic and cultural interests of the kingdom it should provide representation for all the productive and intellectual forces of the nation rather than for mere differences of political opinion as represented by squabbling groups which call themselves parties. The Fascist philosophy assumes that the individual citizen's point of view on nearly all questions of public policy is determined by his economic and social station in life. This is because the issues have now become economic rather than political. They are mainly concerned with such matters as public finance and taxation, the relations of employer and worker, social insurance, trade and tariffs, and the promotion of industrial prosperity. Such problems it is believed should be settled by discussion among representatives of the interests directly affected; they should not be turned over for settlement to groups of professional politicians who regard them as mere pawns on the chessboard in the play of partisan rivalries. To this end the Italian parliament is being transformed from a political legislature into a great economic council based upon the principle of vocational representation.

But while the old Chamber of Deputies has been retained during the first fifteen years of the Fascist reconstruction its powers and influence have become steadily smaller. They are now at the vanishing point. This is because the executive authorities have greatly extended the practice of law making by decrees. Legislation by decrees or ordinances is of course not a Fascist innovation. The constitution of 1848 empowered the crown to issue necessary decrees and regulations for the execution of the laws, without however suspending their observance or granting exemption from them. Under this provision large numbers of royal decrees were framed and promulgated by the ministers every year. But the limitations were strict. The decrees had to keep within the bounds of statutes passed by parliament and they had to be countersigned by a minister who was responsible to parliament.

Since 1926 however a new arrangement has been in effect. By

<sup>1</sup> A table showing the occupational distribution of the Chamber membership is printed in H. W. Schneider, *The Fascist Government of Italy* (New York, 1936) pp. 56-57.



the provisions of a general law which was enacted in that year the power of the government to issue decrees was greatly extended.<sup>1</sup> Decrees may now be promulgated with the full force of law if they have as their purpose (a) the execution of the laws or (b) the use of powers belonging to the executive branch of the government or (c) the organization and functioning of the state administration. In addition the government is now empowered to issue regulations having the force of law whenever the case is exceptional by reason of its urgency or absolute necessity. Such regulations however must be submitted to parliament for ratification at not later than the third session after they have been promulgated.

ITS L. GREASE  
DURING THE  
LAST FIVE  
YEARS.

Decrees are issued in the name of the crown and must have the countersignature of a minister but the minister is not responsible to parliament. He is accountable only to the head of the government who in turn is responsible to the king. Much important legislation has been put into effect during recent years without discussion in parliament at all. Obviously the Italian parliament can repeal or amend the provisions of any decree by enacting a new statute but no proposal for such repeal or amendment can obtain a place on the calendar of either chamber without permission from the head of the government. As a practical matter therefore the decree making power of the executive is virtually final and extends over the whole area of legislation. It is not even limited by the provisions of the constitution.

ITS ABSOLUTE  
CHARACTER.

The apologists for this arrangement argue that it gives flexibility to the methods of lawmaking. It enables the country to have its laws made and changed promptly without interminable debates and endless compromises. It embodies a plan of lawmaking by experts who know what is needed and can adapt the provisions of their decrees to the actual requirements of the public well being. But the dangers inherent in this expanded practice of legislation by decree are obviously great. The English House of Commons fought and won its battle with the Stuart kings on this very issue. Executive legislation has its merits but it is capable of serious abuse unless the executive branch of the government is directly responsible to the

HOW THE  
FASCIST  
LEADERS  
DEFEND THIS  
EXTENSION

<sup>1</sup> The law of January 31, 1916. An English translation is printed in W. E. Rappard and others, *Sour Book: European Governments* (New York, 1937) Part III, pp. 14-16.

representatives of the people which is not now the case in Italy

In connection with the reorganization of the Italian government there has been no extension of the suffrage and women have not yet been given the right to vote. The suffrage at the present time is granted to all male Italian citizens, twenty-one years of age or over (or eighteen years of age or over if married or widowers with children) provided they satisfy one of the following four conditions: (a) are contributing members in any of the various syndicates; or (b) pay taxes either national or local amounting to at least one hundred lire (\$5.00) per annum; or have an annual income of five hundred lire from government bonds; or (c) are employees or pensioners of the national or local governments or of any public institution; or (d) are clergymen of any religious body recognized by law. This means virtually full manhood suffrage. The number of adult male citizens who cannot qualify under some one of the above mentioned conditions is very small.

There was a woman suffrage movement in Italy during the years immediately following the war and it was looked upon with favor by the Socialist party but during the past decade it has been submerged by the fascization of Italian political thought. Women employers and workers are admitted to membership in the syndicates and on one occasion Mussolini virtually promised that the national suffrage would be extended to include them<sup>1</sup> but nothing in that direction has yet been done. In 1925 women were given the right to vote at municipal elections but since such elections have been abolished this privilege no longer exists.

#### LOCAL GOVERNMENT

For purposes of local government Italy is divided into 92 provinces corresponding somewhat to the French departments.<sup>2</sup> Like the latter they vary in size and population. Each province has as its chief executive officer a prefect whose functions are in general like those of the official

<sup>1</sup> In his *Pubblica* of June 2, 1923, printed in *Mussolini as Revealed*. His *Political Speeches* edited by Bernard Quaranta di San Severino (London 1923) p. 286.

<sup>2</sup> Prior to 1927 there were 75 and that year new provinces were established mainly in territory which had been acquired as a result of the war.

who bears a similar title in France. These prefects are appointed by the crown on recommendation of the minister of the interior through the head of the government. At the present time Mussolini occupies both these positions. The prefect is not only the chief official of his province but serves as the provincial agent of the national administration. In all matters he is subject to its authority and supervision. He is assisted by a deputy prefect and one or two provincial inspectors who are also appointed from Rome. In case the prefect is incapacitated or absent the deputy prefect takes his place. There is also a secretary of each prefecture and a varying number of provincial employees.

#### THE PROVINCES AND THEIR PREFECTS

Each province also had its provincial council until 1927, the members being elected by the people for a four year term. But by the Fascist reconstruction of local government which took place in that year all provincial elections were indefinitely suspended. In place of the council each province was endowed with a *giunta* or appointive board, the members of which are appointed by the central authorities at Rome. This board has various functions in connection with the administration of the province and also with respect to the supervision of government in the communes. Since 1931 moreover there has been in each province a provincial council of corporative economy with the duty of coordinating the productive activities of the province. But these bodies have not yet become active agencies of systematic regulation. So virtually all power in the Italian province is lodged with the prefect who is not responsible to any local authority but only to the minister of the interior in Rome.

#### THE PROVINCIAL BOARD

Within the provinces are the communes, more than 7 000 of them in Italy, as in France there is no legal differentiation between city, town and village, all are rated as communes. Prior to 1926 each commune had an elective municipal council and a sindaco or mayor who was chosen by the council from among its own members. But in that year both the councils and mayors were abolished in all communes of less than 5 000 population and by subsequent decrees the same action was taken as respects the larger communes.

#### THE COMMUNES

The chief executive officer of the commune under the new centralization is an official known as the *podestà*.<sup>1</sup> The title harks back

<sup>1</sup> The cent is on the last syllable.

to the cities of mediaeval Italy. The podestà is appointed by the minister of the interior (usually on recommendation of the prefect) *his term of office is five years and he is eligible for reappointment. But he may be removed at any time. To be eligible for appointment as a podestà one must possess certain educational qualifications which are laid down by law or a designated amount of experience in municipal administration. Citizens who served in the zone of operations during the World War with the rank of officer or non-commissioned officer are exempted from these requirements.*

The podestà under the new law has acquired all the powers formerly vested in the sindaco and the municipal council. He has become the focus of all municipal authority. He promulgates the laws and decrees which are sent to him from Rome through the prefect of the province; he is responsible for the maintenance of public order and security in his commune; he prepares the local budget and virtually fixes the municipal tax rate. As respects local matters he may issue decrees on his own initiative. In the larger communes the minister of the interior may appoint a deputy podestà, and in cities of over 100 000 population he may appoint two of them. They assist the podestà by doing such work as he may assign to them and serve in his place during his absence or incapacity. The podestàs receive no salary but they may be given allowances for expenses which sometimes amount to more than what the sindacos were paid. They need not be chosen from the communities which they are set to rule and in fact are often sent in from outside.

The elective municipal councils were abolished in 1927 and provision was made for the establishment of advisory councils in their place. These councils which vary in size from ten to forty members are obligatory in communes of more than 5 000 population but optional in the smaller ones. The councillors are appointed by the prefect except in cities of over 100 000 population. In these they are named by the minister of the interior. But in either case the appointments are made from lists of names submitted by the local syndicates. The functions of the councils are altogether advisory. They have no final powers of any kind but must be consulted on the local budget and on tax matters.

From all this it must not be assumed that the podestà is a local

dictator. He is not accountable to the people of his commune to be sure but supervision over all his actions by the higher authorities is strict and continuous. A memorandum setting forth all actions taken by the podestà must be transmitted daily to the prefect of his province and the prefect may overrule any such action within fifteen days. The budget of the commune must also go to the prefect who has thirty days in which to approve or disapprove it. If the prefect has any doubt he sends one of his provincial inspectors to the commune to investigate. And if he finds that the local authorities are incompetent or negligent in the matter of any local service he may send experts (at the expense of the commune) to effect the necessary improvements.

CENTRAL  
SUPERVISION

In the case of proposals to borrow money on the credit of the commune and in certain other matters the consent of the provincial *giunta* must be obtained. This board has also been given a variety of supervisory powers with respect to the acquisition or sale of lands by the communes and economic activities in general. When controversies arise between podestà and prefect or between the local and the provincial authorities with respect to their rights and jurisdiction the minister of the interior has power to intervene and decide.

Rome, the Italian capital, has been under a special dispensation since 1925. Its mayor and elective council were then abolished and replaced by an appointive municipal organization which consists of a governor, two deputy governors and ten rectors. All are named by the crown on the advice of the minister of the interior. The governor is the podestà of Rome, assisted by his two deputies. The rectors serve as the heads of the various municipal departments and services. They do not form a board but serve as individual administrators under the governor's direction. There is also an advisory council of eighty members who are appointed from lists prepared by the various syndicates and associations.

THE GOV-  
ERNMENT  
ORGANIZATION

The existing plan of local government in Italy thus embodies the principle of centralization raised to the highest pitch. Podestàs, prefects and the minister form the three rungs of the ladder of rigid central control. Through his prefects and his podestàs the minister has a direct channel of authority over every official of local government from one end of the kingdom to the other. This provides one reason why Mussolini has chosen to retain the post of minister of the interior for

THE HIGH  
RECENTRAL-  
IZATION

himself. The extinction of local self government (as Americans understand the term) is virtually complete. The people elect nobody in any branch of local administration.

### THE ITALIAN COURTS

Changes of great importance have also been made in the Italian judicial system during the past fifteen years, and here again the trend has been strongly toward centralization. In their early development the Italian legal and judicial systems owed a great deal to France. After the unification of the kingdom the Italian government followed the Napoleonic example and gave the kingdom a series of codes. These embodied the civil law, the criminal law, the procedure in both fields, the laws relating to commerce, and so on. The Italian codes still follow the principles of the old Roman jurisprudence and in general bear a resemblance to the codifications which were framed in France under the auspices of the first Bonaparte.

Prior to 1923 there were five courts of cassation in Italy, with no supreme court for the whole kingdom. This proved an obstacle to the uniform interpretation of the law as set forth in the codes. One interpretation would hold in the north of Italy, another in the south. But the five courts of cassation have now been unified into one tribunal, with its seat at Rome. Today there is uniformity in the interpretation of the laws and decrees. This does not imply, however, that a decision when once given by an Italian court must stand as a judgment to be followed. The Anglo-American legal doctrine of *stare decisis* has no place in Italian jurisprudence. Every decision, even in the court of cassation, stands on its own feet. The court may reverse its rulings, and does so frequently. This practice has some merits in keeping the interpretation of the law abreast of current needs, but it puts an element of uncertainty into the administration of justice.

The judges in all the regular courts are appointed by royal decree on recommendation of the minister of justice, but they must be persons who possess certain qualifications in the way of legal training and experience laid down by law. As in France, they are usually chosen from those who have prepared themselves for a career on the bench, and not from among lawyers engaged in the active practice of law, as is the American custom. Judges of the higher Italian courts are ordinarily appointed by

THE LEGAL  
SYSTEM

INTEGRATION  
OF THE L. & C.

HOW JUDGES  
ARE NAMED

promotion from the lower ones. No Italian judge may be removed from office after three years of service except with the consent of the superior magisterial council which is a body made up of high judicial officers with the president of the court of cassation as chairman but in 1925 a general dismissal or demotion of anti Fascist judges proved to be possible when the government demanded it. The superior magisterial council also prepares and keeps up to date a schedule showing the qualifications and experience of all the judges and public prosecutors. This schedule is followed by the minister of justice in making promotions.

#### PROMOTIONS AND TENURE

The lower courts of Italy are organized on a district basis. The whole kingdom is divided into primary judicial areas each having its own local court with a magistrate or praetor at its head. These courts have a limited jurisdiction in both civil and criminal cases. Above them are superior courts more than a hundred in number which hear appeals from the lower courts and have original jurisdiction in more important civil controversies. For serious criminal cases there are courts of assize which sit with a jury. Mention should also be made of the special courts for the defense of the state which have been set up to try persons accused of offenses against the Fascist regime such as the organization of unauthorized political associations. These courts made up of officials do not afford accused persons the protection of a jury trial.

#### THE GRADATION OF COURTS

#### 1. DISTRICT COURTS

#### 2. SUPERIOR COURTS AND COURTS OF ASSIZE

Above these intermediate courts are courts of appeal with headquarters in various parts of the kingdom (Rome, Milan, Palermo, Naples, Venice, etc.). They have branches or sections which hold sessions in the less important cities. Each court of appeal moreover has a special section which serves as a labor court and decides controversies which arise under the provisions of the labor charter and other laws relating to the rights of employers and workers. Finally, as has been mentioned there is the court of cassation at Rome with final jurisdiction in all civil and criminal cases. As in France the court of cassation is a large body and its judges are assigned to sections or divisions of the court. This court also serves as a tribunal for deciding controversies as to the respective jurisdictions of the ordinary courts and the administrative courts.

#### 3. COURTS OF APPEAL

#### 4. THE COURT OF CASSATION

For Italy like France has a separate system of administrative law

and administrative courts. The general principle is the same in both countries namely that public officers are not amenable to the jurisdiction of the ordinary courts for acts performed in their official capacity. So administrative courts are maintained for the hearing of complaints against such officials. In each Italian province there is an administrative court made up of the prefect and certain other provincial officers. Appeals from the decisions of this court may be taken in most cases to a special section of the council of state which sits in Rome.

Other sections of the council of state have various administrative functions such as the scrutiny of royal decrees as to their form, the approval of state contracts and so forth. The council as a whole has more than fifty members all of whom are appointed by the crown on recommendation of the minister of the interior. They may not be removed or transferred or reduced in salary except under conditions which are prescribed by law. These conditions are such as to afford them a reasonable permanence of tenure under ordinary circumstances but all councillors not amenable to Fascist influence have been eliminated by one means or another.

Thus the Italian judiciary in both its regular and administrative branches has been coordinated into the totalitarian structure of the Fascist state. It has been made subordinate to the executive branch of the government. As will be seen in the next chapter this has facilitated the extinction of what democratic countries have known as civil liberties. They who give up essential liberty to obtain a little temporary safety deserve neither liberty nor safety wrote wise old Benjamin Franklin nearly two hundred years ago. That axiom is as true today as it ever was but a considerable portion of the world does not seem to realize it.

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In addition to the various books listed at the close of the last chapter mention may be made of G. A. Chaurco *Storia della Rivoluzione Fascista 1919-1929* (5 vols. Florence 1929) which is the most comprehensive history of the Fascist reconstruction from a Fascist point of view. Eugene Godefroy *Le jeune d'Italie* (Paris 1929) explains in concise form all the political changes which took place during the first seven years of the Mussolini regime. A more recent volume by P. Chimenti translated into French under the title *Dr. i nst i t u t i o n e l t a l a* (Paris 1932) as prepared as a Fascist textbook. Alexander Robertson *Mussolini and the New Italy* (2nd edition London



1929) is a favorable account of what fascism has accomplished. Attention should also be called to J. S. Barnes *Fascism* (New York, 1931) Bolton King *Fascism Italy* (London 1931) and George Seldes *Saudust Caesar* (New York, 1935)

Excerpts from laws, decrees, speeches, and writings relating to contemporary Italian government are printed in Norman L. Hill and Harold W. Sacke *The Background of European Governments* (New York, 1935) pp. 447-516

## CHAPTER XXXIX

### ITALIAN POLICIES AND PROBLEMS

It is impossible to understand the long need which has always determined the general lines of Italian policy without taking into account the two principal factors which still govern Italy's present and future—the growth of her population and her geographical position in the Mediterranean.—*Fantuzzi Coppola.*

Italy is a land of problems. Some of them are the result of over population others have arisen because the country is so badly lacking in natural resources such as coal oil and iron. Still other problems have grown out of Italy's geographical structure—a long peninsula with three sides vulnerable to the sea. Finally there are problems which have come by inheritance from the past for example the great issue between church and state which now appears to have been amicably settled. One might add by way of supplement, that some of Italy's newer problems have also been the by product of an ambition to justify her heritage from imperial Rome by displaying a genius for war conquest, and colonization.

The problem of economic reconstruction into a corporative state has not yet been completely solved by the Italian government, despite the strenuous efforts of the past fifteen years. The widely heralded Charter of Labor (1927) was eulogized as a genuine social compact, a permanent treaty of industrial amity between employers and employed marking the end of class warfare and worthy to be emulated by other nations seeking internal peace. Its sponsors gave assurance that it would guarantee to every worker steady employment fair wages and a decent standard of living. To employers it promised relief from unjust labor demands strikes picketing and sabotage. But the complaint is now frequently made that, far from winning a Magna Carta, the Italian worker has purchased 'security' at the expense of all the rights which organized labor has been fighting for during the past hundred years. His standard of living has not been visibly raised. On the other hand the free and voluntary association of workers for

the promotion of their own interests their right to choose their own officers the right to strike—all these have been surrendered for a complicated arrangement of syndicates federations confederations joint corporations and labor courts each of which is under the domination of the Fascist party Workers must abide by collective bargains which are made on their behalf not by representatives of their own choosing but by officials designated from the Fascist party organizations<sup>1</sup>

Complaint is also made that the collective contracts in the absence of the right to strike are usually the result of a compromise in which the workers get only a small part of what they demand Hence it is said these contracts tend to maintain the *status quo* and to perpetuate existing conditions rather than to promote improvement in the situation of labor Since the negotiators are enthusiastic Fascists the contracts are alleged to be more often the result of solicitude for the political interests of the Fascist party than for the economic interests of the employers or workers involved Italian labor leaders when they dare express their views (which is not often) protest that they and their fellow workers could do better if permitted to bargain for themselves without government intervention In losing the right to strike they feel that labor has surrendered its most powerful weapon

Data gathered from the collective contracts which have been made public during the past five years seem to indicate that the system has not availed to raise the general level of wages in Italian industries or in agriculture Nominal wages in many cases have declined and real wages have not appreciably advanced Some investigators believe that real wages have declined also On more than one occasion moreover the government has ordered a horizontal reduction of wages by decree thus reducing the figures agreed upon in collective contracts This is done on the principle that measures designed to stimulate national pro-

CRITICISMS  
O THE  
COLLECTIVE  
CONTRACT  
SYSTEM

1 THE  
PERPETUATE  
EXISTING  
O DINO S

2 THEY  
D PRESS  
WAGES

For typical Italian labor contracts see W. L. R. Pappard and others *Survey of European Government* (New York, 1937) Part III pp 96-113

See the data presented in M. L. Parnell *Blasphemy Fascism and the Liberal Democracy* (New York 1934) pp 260-265 also the bulletin in *The Economic Situation in Italy* published by the Foreign Policy Association (8 West Fourth Street New York City) Vol. X, No. 24 (January 30 1935) p 315 Compare also the table of wages and prices printed in H. W. Schneider *The Fascist Government of Italy* (New York, 1936) p 8

duction are justified even when they bear heavily upon the individual categories concerned

Critics of fascism also complain that there is no longer any place in Italy for labor leaders in the English or American sense. The work-  
 3 THEY ers in their syndicates and federations have no recog-  
 DISCOURAGE nized leaders chosen by themselves. In the making of  
 LEADERSHIP collective labor contracts they are represented as has  
 been said by Fascist politicians who are not of their own choosing.  
 Hence it is not surprising that American labor leaders to the extent  
 that they know anything about the relations of capital and labor  
 under fascism, are bitterly opposed to anything which looks like a  
 Fascist movement in the United States. They realize full well that  
 the success of such a movement would eject them from their positions  
 of leadership. What they do not seem to realize is that sit down  
 strikes violence and the warfare of one labor organization against  
 another lead inevitably to government intervention and to political  
 control over all labor relations.

As for the employers or captains of industry in Italy they too have  
 been considerably disillusioned especially during the past three  
 years. In its early stages fascism professed a high re-  
 gard for the sanctity of private property. Fascism  
 arose in fact as a protest against communism and for  
 several years Mussolini assured Italian industrialists that the cor-  
 porative state had no intention of going into business or competing  
 with private concerns. It would regulate not own or operate. But  
 government regulation of business as Italy has discovered does not  
 stop at mere regulation. What happens is that regulation being  
 usually inept, tends to make business unprofitable to its owners.  
 Then it becomes essential to help business with government sub-  
 sidies or with loans. Presently the government finds that it has ac-  
 quired a heavy financial interest in the state aided industries and to  
 protect this interest must regulate them further or take them over  
 altogether.

Thus in 1933 the Italian government intervened to salvage various  
 Italian industries from bankruptcy by establishing the Industrial  
 Reconstruction Institute a counterpart of our own  
 WAR INDUS- Reconstruction Finance Corporation. This Institute  
 TRIES TAKEN Reconstruction Finance Corporation. This Institute  
 OVER made loans to many large industrial concerns and  
 eventually became the virtual owner of them. Early in 1936 there-  
 fore Mussolini startled the outside world (but did not surprise those

familiar with the normal evolution of a planned economy) by announcing that the government would take over all large Italian industries concerned with the production of materials which might be needed for national defense

The reason given for this step was the alleged likelihood of a general European war in which case it would be prudent to have all the large Italian chemical metallurgical and various other industries mobilized under the government's immediate control. Such action would forestall war profiteering as in the last World War and would enable the nation to throw its entire industrial resources behind the army. The real reason, as a matter of fact, was that the Italian government had advanced so much money to some of the great industries that it could see no prospect of recouping itself except by taking them over. Nor is it likely that this process of nationalization will stop with large industries which might be useful in war time. There is every likelihood that it will go farther.

Unemployment has been reduced in Italy since 1933 (according to the officially published figures) but this end has been achieved by greatly increasing the number of men on the public pay roll including the army and the navy as well as by the stimulus to industry which was given by the Ethiopian war and the upbuilding of national armaments. These enterprises have kept great numbers of Italian industries working overtime during the past few years but since they have been largely financed by increasing the national debt this stimulus cannot operate indefinitely. Meanwhile the glamor of fascist triumphs in Ethiopia and Spain as well as in the field of diplomacy have served to alloy the discontent that internal difficulties would otherwise have caused.

Whenever troubles have arisen in the economic order the Fascist leaders have tried to meet them by issuing regulations. But in alleviating one problem they have usually created another and in dealing with the second problem they have created a third until the process has become a never ending one. One decree reduces wages then another is required to make a corresponding reduction in the rents charged for workers' homes and in the prices of food. Every such decree or regulation requires more officials for its enforcement until in time a great regulating bureaucracy is built up. Eventually the machine

TO BUSINESS  
AND WAR  
REPARA  
TIO

THE RE  
DUCTION  
OF UNEM  
PLEYMENT

THE ENDLESS  
CHAIN OF  
OFFICIAL  
REGULATION

becomes so unwieldy that it breaks down and has to be repaired by still further decrees

The lesson of the totalitarian state in Italy is that when a government undertakes to make industry conform to what it regards as the political interests of the state or the strengthening of a political party there will be a continuous round of problems not one of which ever solves itself. One move leads to another regulation leads to regimentation and regimentation to virtual state ownership until in the end the principle of private property must become meaningless. The ownership of property may ostensibly remain in private hands but the control of every detail in the use of it passes to the government. Already the Fascist government is in complete control of Italian banking credit foreign trade and foreign exchange. One by one it is nationalizing the larger industries. When industrialists accept the idea of a totalitarian state as they did in Italy they start the institution of private property on its way to the guillotine.

From what has been said in the foregoing paragraphs it will be seen that one cannot correctly visualize the temper of present-day

#### A GENERAL SUMMARY

Italian political life by merely surveying the governmental institutions. The totalitarian state is primarily an economic unity. Fascism has preserved in it for the time being the forms and methods of capitalist production but these have been subjected to rigid and far reaching dictatorial surveillance. Neither employers nor workers enjoy self government under the intricate corporative system which has been built up. The Italian citizen has ceased to function as a citizen he has become a cog in the corporative mechanism. The two great European political ideals of the nineteenth century were democracy and liberalism. Both are today in total eclipse throughout the Italian peninsula.

#### BUDGET AND DEBT PROBLEMS

Even more serious than the problem of maintaining a planned industrial economy on a corporative basis is the difficulty which the

#### BUDGETS DEFICITS AND DEBTS.

Italian government has encountered in the field of public finance. Before the World War Italy had trouble in making her budgets balance. The war of course increased the Italian public debt enormously and placed a heavier burden of interest charges upon the post war budgets. The years 1919 to 1922 were marked by annual deficits of huge propor

tions which were liquidated by borrowing money and thus increasing the national indebtedness still more. Italy's public debt in 1914 was only sixteen per cent of the estimated national wealth but by 1922 it had risen to nearly thirty five per cent. The old government found itself unable to retrench expenditures sufficiently and lacked the courage to overhaul the tax system.

Beginning with 1922 however Italian public finances underwent some improvement. The new Fascist government cut expenses re-constructed the system of taxation and brought both columns of the budget more nearly together. For a short time indeed it managed to make them balance.

FASCIST  
FINANCIAL  
REFORMS

The floating portion of the national debt was properly funded and its carrying-cost reduced. The lira, Italian unit of currency, was stabilized in value. Whatever one may think of Fascist political philosophy, it is at least certain that Mussolini during the middle twenties was able to steer his country away from what looked like inevitable financial collapse.

But the great economic depression which began in 1929-1930 came to Italy as to all other countries. And as elsewhere it slackened industry, curtailed foreign trade, increased unemployment, and threw public budgets out of gear. In spite of extremely burdensome taxes the Italian government could no longer make both ends meet and a series of heavily unbalanced budgets necessitated a still further increase in the national debt. As the foreign market for Italian government bonds was not favorable, the new issues were sold for the most part to Italian banks and individual investors, the sales being made under a considerable measure of Fascist compulsion. Italian owners of foreign securities moreover were ordered to report all such holdings to the government, which exchanged them at will for its own bonds. No foreign securities were permitted to be sent out of the country except under government auspices and no Italian citizen was allowed to leave the country without official permission. An attempt was also made to bring under government control the considerable body of Italian subjects who live abroad.

EFFECTS OF  
THE DE-  
PRESSION

The Ethiopian campaign placed Italy under the necessity of importing large quantities of oil, gasoline, cotton and other war materials from foreign lands. This resulted in a large excess of imports over exports despite strenuous efforts to discourage all imports except those es-

THE UN-  
FAVORABLE  
TRADE  
BALANCE

essential for war purposes and to encourage exports of all kinds. The unfavorable trade balance had to be liquidated to some extent by payments in gold and this shipping of gold out of the country greatly depleted the reserve behind the Italian paper currency. This paper money is now on a purely fiat basis the metallic reserve being only a small fraction of the currency's face value.

#### TRADE AND COMMERCE

Population has given Italy some of her problems while geography has furnished others. Place the Italian peninsula upon a same-scale map of California. It will not cover the whole of this single state. Yet California has only six million inhabitants while Italy has forty-two. With so dense a population and such inadequate natural resources, Italy has become dependent upon other countries for her raw materials of industry and for a considerable portion of her food supply as well. These have had to be procured for the most part by means of sea transportation, by access from a single great maritime waterway. For Italy is the only great European nation with a frontage upon a single sea. France has the Atlantic and the Mediterranean. Germany the North Sea and the Baltic, Russia the Baltic and the Black Sea, while Great Britain has her Seven Seas. But Italy is exclusively Mediterranean for the Adriatic is only a projection of the greater waters. Indeed Italy has no other easy means of commercial intercourse with the rest of the world, for her northern frontiers are guarded by mountains which make transportation difficult. Four-fifths of Italy's commerce is maritime. Her imports and exports her security her very existence have thus been dependent upon her ability to keep this one avenue of trade free and open.

Yet Italy does not control the sea which means so much to her. England holds one entrance at Gibraltar and another at the Suez Canal, besides being entrenched at Malta. France stands sentinel at Toulon and at Bizerta. The whole southern shore of the Mediterranean with the single exception of the Libyan desert, is under the aegis of these two countries. Thus the Italians have stood besieged within their own ocean. A blockade of Italy's ports might at any time shut off essential supplies of raw material and thus paralyze the industries of the nation. This became quite apparent during the Ethiopian war when the League of Nations tried to apply sanctions to Italy by shutting off

PROBLEMS  
ARISING FROM  
GEOGRAPHY

BESIEGED  
WITHIN HER  
OWN OCEAN



certain materials. The attempt did not succeed because some nations would not cooperate in the embargo and also because the list of prohibited supplies did not include the most essential ones particularly oil and its products. But the episode demonstrated the inherent economic weakness of the Italian commonwealth.

It has therefore seemed vital that the Italian government should strive to remedy this situation by several far reaching measures.

*First* it has tried to decrease Italy's dependence on foreign raw materials especially on coal and oil by developing hydroelectric power for industry. The Fascist government has also sought to increase the home

THE PROGRAM  
OF RELIEF  
FROM THIS  
SITUATION

production of foodstuffs particularly of wheat. Some measure of success has attended both these efforts. *Second* the government has endeavored to increase the production of manufactured goods for export and to curtail the importation of non essentials thus securing a favorable balance of trade. To this end the Italian merchant marine has been heavily subsidized and the tax burdens on shipping reduced. Concerns engaged in the export trade have been aided by government financing. The tariff on imports has been raised. Commercial treaties have been negotiated with several countries. These various measures have helped to narrow the gap between imports and exports but the balance is still on the wrong side.

*Third* the Fascist government has entered upon a program of naval and air force expansion. Italy is determined to be in a position where essential supplies cannot be shut off by blockades or sanctions. Dependence for this security is being placed not only upon increased naval strength especially in the form of submarines and small fast moving

MILITARY  
NAVAL, AND  
COLONIAL  
EXPANSION

surface craft but upon a huge fleet of airplanes. This program has been carried to a point where it is now the belief of the Italian government that Gibraltar, Suez, Malta and the other outposts of Great Britain in the Mediterranean are no longer to be feared. *Fourth* and finally the Fascist government is demanding for Italy a place in the sun in other words colonies and overseas possessions as elbow room for her surplus population, sources of raw materials and markets for manufactured commodities. It was in keeping with this aspiration that Italy in 1935-1936 undertook the invasion of Ethiopia (Abyssinia) which resulted in the conquest of that country.

## TERRITORIAL EXPANSION

The story of Italy's colonial ambitions and enterprises leading up to the Ethiopian conquest is a long and not an altogether edifying one. When Italy became a unified nation in 1871 most of the territories available for colonization had already been acquired by other countries especially by Great Britain, France, Holland, Spain, and Portugal. It was an Italian who discovered the new world yet Italy never gained the slightest foothold in either of the two great continents which Columbus found. Italian merchants permeated far into Asia during the early modern centuries yet their country never acquired a single foot of colonial territory in the Near East. In 1871 there were still opportunities on the north coast of Africa and Italy began to cast covetous eyes on Tunis where there were many Italian immigrants. But France was too quick and forestalled her there. Consequently the Italian government had to be content with some of the left over shreds and patches of the Dark Continent. In due course Italy acquired Eritrea on the Red Sea and Italian Somaliland farther south. This brought her into contact and eventually into controversy with Ethiopia but an Italian invasion of the latter country in 1896 was repulsed. This setback caused Italy to abandon her dream of an Ethiopian empire but not permanently for after Mussolini's accession to power the project was revived.

Reasons for a declaration of war upon Ethiopia were not difficult to find. There were boundary disputes and clashes between armed border patrols. The Italian government presently decided to settle the matter by military action. In so doing it merely added another chapter to the sordid chronicle of Europe's penetration into Africa motivated chiefly by economic avarice and imperial greed.

Ethiopia, as a member of the League of Nations, called for sanctions under the terms of the League covenant and some sanctions were applied to Italy notably the withholding of financial credits and the refusal of League countries to supply her with munitions. The League also banned certain other exports to Italy and prohibited all imports from that country. But not all the members of the League joined wholeheartedly in applying these sanctions nor did the list of prohibitions prove to be sufficiently comprehensive. It did not include oil for ex-

THE  
ETHIOPIAN  
CONQUEST

THE  
PRELIMI-  
NARIES.

THE LEAGUE  
AND THE  
SANCTIONS.

ample although oil has become a war material of the most vital importance when large air forces and motorized transport facilities are involved

Great Britain feeling that the security of her own African interests was involved took the lead in urging League action of a drastic sort but France held back. The French government in this attitude was influenced by a strong desire to assure for France the friendship and cooperation of Italy in the event of a future Franco-German conflict. At any rate Italy was able to complete the conquest of Ethiopia although the cost of the venture was enormous and it is questionable whether the new territory will prove to be a source of considerable profit. The immediate result, however was to strengthen the Fascist domination of Italy and to increase the prestige of Mussolini as the leader of his people. Meanwhile Ethiopia has been annexed outright and the Italian king has been proclaimed emperor—a gesture marking a further step toward the realization of Mussolini's professed ideal which is to revive the Rome of the Caesars.

THE  
IMMEDIATE  
RESULTS

#### THE ROMAN QUESTION

One of Italy's most embarrassing problems for many years but now settled for the moment at least concerned the relations of the government and the Papacy. The origins of this question go back a long way back to the fourth century when the capital of the Roman empire was moved to Constantinople and the Papacy secured an opportunity which ultimately placed it in possession of the Eternal City. But it is not necessary to follow the history of the Vatican through the middle ages and down into the modern centuries. It is enough to begin with the Congress of Vienna (1814–1815) which confirmed the Pope in possession of Rome and the Papal States as a civil sovereign. During the years down to 1870 there fore the Pope occupied a dual position. He was the head of the Roman Catholic hierarchy in all countries and he was also the secular sovereign of Rome and of the States of the Church. These states had no constitution. There were no limitations on the powers of the Pope as a secular ruler. He had ministers but no parliament. He appointed governors and civil magistrates he promulgated the laws and by his authority the taxes were levied. This secular rulership of the Vatican had some meritorious features but

THE VATICAN  
AND THE  
CONGRESS OF  
VIENNA

THE PAPAL  
STATES

the practice of combining temporal with spiritual rulership has never proved very satisfactory anywhere

At any rate the people of Rome and the Papal States desired a representative system of government and in 1848 they clamored for

THEIR GO  
VERNMENT

a constitution quite as loudly as did the people in other parts of the country. Pope Pius IX granted a constitution but this action did not allay the discontent and during the trouble a short lived Roman republic was established. The French government intervened as protector of the Papacy however and restored the temporal power of the Vatican. The constitution was abolished. Things were put back on their old footing. But the success of the nationalist movement in the other Italian states kept the Roman question alive and forced it to the front wherever the future of Italy was under discussion.

So the whole problem resolved itself into this. Italy was determined to be united with Rome as her capital. That necessarily in

THE TAKING  
OF ROME  
(1870)

involved termination of the Pope's temporal power. Until 1870 France stood by as the guarantor of Papal sovereignty and the Italian government had to restrain its Roman ambition. But when Napoleon III threw his country into the ill starred war with Prussia and was forced to surrender at Sedan the Italians lost no time in turning the French debacle to their own advantage. In 1870 Italian troops entered Rome on the heels of the French withdrawal and thus after twenty five years realized Cavour's dream of a completely reunited Italy. The temporal power of the Holy See was declared to be at an end and what was left of the Papal States were incorporated into the Italian kingdom.

Now it was not the intention of the Italian government to embarrass the Pope in the exercise of his spiritual rulership on the con

THE LAW OF  
THE PAPAL  
GUARANTEES  
(1871)

trary it desired to accord the Vatican every privilege and immunity consistent with the exercise of the new national sovereignty. In keeping with this attitude the Italian parliament in 1871 passed a comprehensive statute known as the Law of the Papal Guarantees. The general purpose of this statute was to ensure the Pope full freedom of action as supreme pontiff. It therefore accorded him most of the privileges of a civil sovereign. All offenses against him were made equal in seriousness to offenses against the king. He was confirmed in his use of the Vatican and Lateran palaces with all their grounds and buildings,

free from taxes perpetually. The law provided that ambassadors and other diplomatic officials accredited to the Vatican should have all the legal immunities given to other ambassadors including freedom from arrest by the Italian authorities. Italian officials were forbidden by the law to enter the precincts of the Vatican without the Pope's permission or to censor communications between the Papacy and the outside world. Finally the statute provided that an annuity of three and a quarter million lire (then nearly \$650 000) per annum should be paid each year to the Holy See from the royal treasury as compensation for the loss of Papal revenues due to the taking of Rome.

Although these guarantees went a long way they did not satisfy the Papal authorities who felt that Italy had done a wrong which could not be set right by diplomatic courtesies, tax exemptions or money payments. Hence while the law of 1871 remained on the statute book until 1929 each successive Pope declined to recognize its provisions in any way. Without exception all the Popes from 1871 to 1929 refused to set foot outside the Vatican grounds or to take a single lira of the government's annuity. So bitter was the resentment of Pope Leo XIII that he advised all loyal Catholics to refrain from voting or from accepting any office in the Italian government and in 1895 the advice was stiffened into a command by the encyclical *Non Licet*. But this policy of non-cooperation did not prove a success. Italians as a people are too fond of politics and of official emoluments to abstain from activity in public affairs.

The decree *Non Licet* was not formally revoked but its rigidity was considerably softened by Pius X who not only permitted but encouraged Italian Catholics to vote whenever their abstention would result in the election of an avowed Socialist or anyone hostile to the church. The promulgation of this new policy led to the forming of a Catholic party in Italy somewhat analogous to the Centrum in Germany but prior to the close of the World War it did not develop any large measure of strength in the Chamber. This was partly because the restoration of the Pope's temporal power was deemed to be one of its principal aims and the great majority of the Italian people regarded that as an impossibility.

During the World War however the relations between the Vati

THE ONE  
REFUSAL TO  
ACCEPT IT

NO LICET

RELATION  
BETWEEN  
THE VATICAN  
AND THE  
ITALIAN  
GOVERN-  
MENT

can and the Italian government became somewhat more friendly and when the war came to a close the Catholic party was reorganized with a new name and a somewhat broader program. It became the *Partito Popolare* or People's party with a platform which advocated many reforms in government but made no mention of the Roman question. Among internal reforms the *Popolari* declared for woman suffrage, proportional representation, reconstruction of the Senate, together with a long list of changes in local government, in the judicial system, and in national finance. On the other hand they were against the Socialists on religious grounds and proposed a solution of the industrial problem by means of social insurance, cooperative production, and the protection of the worker by law.

This program was not altogether irreconcilable with the aims of the Fascists, and although the new electoral laws involved the eclipse of the People's party, an entente cordiale between the government and the Vatican began to develop. As part of the Fascist program to exalt the moral and spiritual aspects of education, religious instruction was reintroduced in the public schools and the olive branch was held out in other ways. In this new atmosphere overtures were made by the government for the opening of negotiations which might lead to the framing of a concordat. The Vatican responded and negotiations began. As the issues were delicate and difficult of adjustment, the conferences (which were conducted without publicity) extended over more than two years, but they eventually resulted in a full agreement (June 1929).

This agreement was embodied in three documents: a treaty, a concordat, and a financial convention. The treaty is of international significance because it set up a new sovereign state or more accurately restored a portion of an old one. The second document, the concordat, was concerned only with the relations between the Papacy and the Italian government, while the financial convention adjusted all the monetary claims of the Vatican arising out of the loss of temporal power in 1870. All three agreements were signed simultaneously and form part of a general settlement.

The states of the church, which had been incorporated into the kingdom of Italy, comprised about 16,000 square miles and extended from mid Italy to the sea. Their population exceeded three millions.

THE  
POPOLARE  
PROGRAM

THE NEW  
FRIENDLINESS  
AND THE  
FINAL RECON-  
CILIATION

THE  
AGREEMENTS  
O. 1929

The new state established by the treaty of 1929 and to which the name Vatican City has been given includes an area of about a hundred acres only. It comprises the Vatican and the Lateran palaces as well as numerous small additional tracts of territory with a present population of about five hundred. Thus Vatican City is the smallest among the sovereign states of the world. But it has all the appurtenances of civil sovereignty with the right to send and receive ambassadors with its own coinage and postal system its own laws and courts. In addition some other tracts (such as the Villa of Castel Gondolfo) not included in Vatican City are given the status of extra territoriality that is they are removed from the jurisdiction of the Italian government and placed under the civil control of the Holy See. All this territory is declared to be neutral and inviolable and freedom of intercourse with other states is guaranteed at all times including countries which may be engaged in war with Italy. On the other hand the Holy See has undertaken not to embroil itself in international combinations or to take part in international conferences unless all the parties in conflict appeal unanimously to its mission of peace. Vatican City although a sovereign state has not sought admission to the League of Nations.

The concordat is a longer document containing forty five articles. The Catholic religion is given official recognition as the state religion of Italy. Religious instruction is made compulsory (for Catholics) in all public schools. The teachers in this field are chosen by the church and paid from the public treasury. But the officials of the church have no authority with respect to the teaching of secular subjects in the school curriculum. Under the Law of the Papal Guarantees the bishops of the church in Italy were named by the Pope but the approval of the Italian government was also required. Under the concordat of 1929 this approval is no longer essential but the government may interpose an objection to the appointment of any Italian bishop if there are political grounds upon which such objection may be based. Before assuming charge of his diocese moreover the new bishop must take an oath of civil allegiance.

Several provisions of the concordat deal with the question of marriage and divorce. Prior to 1929 a civil ceremony was required in the case of all marriages. This is no longer necessary if certain rules concerning registration are complied with. Priests and members

of religious orders are exempted from the obligation of military training and service except that in case of a general mobilization they may be called upon to serve as chaplains. This exemption does not include students for the priesthood or novitiates in the monastic houses. Various religious holidays are accorded civil recognition. The person of the Pope is declared inviolable. Titles of honor and of nobility conferred by the Sovereign Pontiff are recognized by the Italian government, including all that have been bestowed since 1870. And various other matters which had long been in controversy were settled by the provisions of the concordat.

The financial agreement of 1929 is brief and businesslike. The Papacy although entitled to a large annuity during the years between 1870 and 1929 had never taken any of it, because such action would have been construed by the Italian government as an acceptance of the Law of the Papal Guarantees. The payment agreed upon in 1929 was a compromise on both sides. The Vatican accepted seven hundred and fifty million lire (about \$39 000 000) in cash and a billion lire (about \$52 000 000) in government bonds as a full adjustment of all its financial claims. To set its seal on the entire series of agreements the Holy See formally declared the Roman question to be definitely and permanently settled.

Thus was solved an embarrassing problem with which Italian ministers and ministries had unsuccessfully wrestled for two generations. Francesco Crispi once declared that the minister who could clear this problem off the slate would be entitled to rank as the greatest Italian statesman of all time. That is an exaggeration of course, but the achievement was assuredly one of large dimensions. Various motives were attributed to Mussolini in connection with it, but there is no need to go searching for far-fetched explanations. Fascism seeks to eliminate all conflicts between section and section, between class and class, thus enabling Italy to function as a unit. What more natural than that it should strive to settle one of the most outstanding and apparently irreconcilable conflicts—that between church and state. It will be retorted of course that it settled this one by impairing the territorial integrity of the kingdom, and in a technical sense that is true, but fascism is pragmatic in its point of view and as a practical matter the impairment of Italy's territorial integrity is exceedingly slight. It



affects less than one one hundred thousandth part of the national area. On the other hand the agreements have procured for the government great advantages both in international and domestic politics.

The maintenance of public order in Italy is entrusted to the Fascist militia. Originally this was an irregular body of Black Shirts without any legal status but in due course it was incorporated into an organization of volunteer militia and in 1930 the government stipulated that none but members of the Fascist party could belong to it. The Fascist militia has a permanent staff of general officers but the rank and file do not perform full time service. They are called out from time to time for duty or for drill and are paid for this service only. At other times they lie at home and pursue their regular civilian vocations. The Fascist militia is organized after the fashion of Caesar's legions with cohorts, centuries and maniples. Its function is to prevent disturbances of public order and to put down any attempts to interfere with the Fascist government.

THE FASCIST  
MILITIA

Mussolini like Hitler maintains a bodyguard of vigilantes. It is directly under the orders of the head of the government and its function is to protect the Fascist leaders as well as to un- earth conspiracies against the established order. The very existence of this OVRA as it is called was kept secret until 1930 when it became known through its redoubled activities.<sup>1</sup> Even yet its work is done without publicity but it is as effective although not so ruthless as the Russian OGPU was a decade ago.

THE OVRA

There are no independent non partisan newspapers in Italy to day. Fascist control of the press began ten years ago and has been gradually made more stringent. Under the present regulations the publisher of every newspaper must be someone who has been approved by the government.

FASCISM  
AND THE  
PRESS

All those who write what is published in newspapers and other periodicals must be listed with the authorities and the latter may deny this right to anyone who is thought to be out of sympathy with the Fascist regime. A newspaper which offends the authorities may have its issues confiscated and for repeated offenses may be suppressed altogether. Political news is virtually uniform in all the Italian newspapers for it is handed to them by the ministry and printed without

<sup>1</sup> Its full name is *Oggetti di Vigilanza Razzista Fascista*. Society of the Surveillance of Anti-Fascist Activities.

modification. The government professes to welcome criticism but not opposition, reserving to itself however the function of determining whether a newspaper article falls in one class or the other. Italy, therefore, is full of bootlegged news—and it is about as genuine as bootlegged liquor. As for the editorials which appear in Italian newspapers nowadays, they are merely the pyrotechnics of fawning politicians trying to please the powers that be. The correspondence which representatives of foreign newspapers send out of the country is subject to rigid censorship; the same is true of telegraph and cable messages as well as radio broadcasts. One result of this is that rumors of every kind, even the most fantastic, are passed along in whispers and freely exported across the frontiers.

Various happenings during recent years have brought Italy's foreign ambitions into bolder relief. The Spanish insurgents during the civil war in that country were greatly aided by man power and munitions from Italy. In this enterprise the Italians received cordial support from Germany. For many years on the other hand Italy opposed German plans for the absorption of Austria, but in 1938 permitted the *Anschluss* to take place without even a protest. Thus Germany has moved to the Italian border with no buffer state intervening. Many thoughtful Italians fear that in the long run this will force Italy to serve as a definitely junior member of the Berlin-Rome partnership. But as an offset to an undue dependence on German cooperation the Italian government has met both Great Britain and France halfway in their endeavor to negotiate agreements of international amity. Italy, in a word, seeks to hold the balance of power in Europe.

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Material on the various matters covered in the foregoing chapter may be found in many of the references given at the close of the two preceding chapters. In addition one may call attention to H. Goad and M. Currey, *The Working of a Corporate State* (London, 1933); Carmen Haider, *Labor and Capital under Fascism* (New York, 1930); F. Prigiani, *The Italian Corporate State* (London, 1933); and Bulletin No. 15 of the Royal Institute of International Affairs entitled 'The Economic and Financial Position of Italy' (London, 1935). M. T. Flinisky, *Fascism and National Socialism* (New York, 1936) compares the Italian and German systems.

*Italy's International Economic Position* by Constantine E. McGuire (New York, 1926) and Herman Finer, *Mussolini's Italy* (New York, 1935) contain much useful information. H. W. Schnitzer, *The Fascist Government of Italy*

(New York 1936) is an up-to-date political and economic analysis. G. Salvemini *Under the Axe of Fascism* (New York 1936) deals with the situation of the Italian worker. A. Cippico *Italy: The Central Problem of the Mediterranean* (London 1926). I. S. Munro *Through Fascism to World Power* (Glasgow 1933). L. Lojacono *Le corporazioni fasciste* (Milan 1935). Marcel P. Clot *L'impresario fascista* (Paris 1936). F. Virgili *Il problema della popolazione* (Milan 1924). F. Cotta *A Cultural Criticism in Fascist Italy* (London 1935). Paul Einzig *The Economic Foundations of Fascism* (London 1933) and G. C. Baravelli *The Policy of Public Works under the Fascist Regime* (Rome 1937) are all worth mention. The recent volume by Mario Missiroli on *What Italy Ows to Mussolini* (Rome 1937) is an interesting presentation, strongly pro-Fascist in flavor.

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## CHAPTER XL

### SOVIET RUSSIA ITS GOVERNMENT

The proletarian revolution in Russia marks a decisive break with the reactionary traditions and ideology of the past. To compare it with previous revolutions is to miss its significance and misrepresent its character. There are no historical standards with which to measure the proletarian revolution in Russia; it is making its own history and creating its own standards.—*Nicolas Lenin*

Even well informed Americans often have erroneous ideas about Russia. They think of Russia as a nation in the sense that England, France or Italy are nations. On the map they have seen a vast expanse of territory sprawling westward over Northern Europe and eastward over Northern Asia—with an area of more than eight million square miles or about three times that of the United States—all of it designated as Soviet Russia. They read that there are about 170 000 000 Russians inhabiting this expansive territory all under one government with Moscow as its capital. It is natural that they should think of the U S S R as though it were a unified country like the U S A.

But Russia is not a nation in that sense. It is an irregular checker board of territories and races. Before the war Russia was made up of at least ten quite distinct and none too-closely related areas peopled by Russians, Poles, Jews, Finns, Letts, Turko-Tartars and Mongolians. First there was Russia proper extending from the Baltic Provinces to the Ural Mountains and from the Arctic Circle to the Black Sea. This great region is peopled almost altogether by Russians—Great Russians, Little Russians and White Russians. Northwest, west and southwest of this region were Finland, Latvia, Lithuania and Russian Poland inhabited by peoples of a different speech and religion. Southeast, south and east were Caucasia, Russian Central Asia and Siberia. Here again people differed from the rest of the empire not only in speech and religion but in race. Such was Russia before the war, a huge salamander comprising one seventh of the land surface of the globe but every inch of it contiguous. As a result of the peace treaties some of this territory has been lost but the greater part of it remains

RUSSIA AS  
A NATION

ITS DIVISIONS  
BEFORE THE  
WORLD WAR.

within what is now known as the Union of Socialist Soviet Republics (U S S R )

The old Russian empire was built up by accretion. In the earlier stages its growth was much like that of the United States. Traders and settlers moved to the frontier where they came into contact with native tribes whose lands they presently absorbed. But during its later stages the expansion of the Russian empire was more like that of Rome. It was a blood and iron performance. War and conquest were its main features. Annexations were made as ruthlessly as in the days of Roman power.

H W THE  
OLD EMPIRE  
AS CREATED

Unfortunately the Czars were not organizers and administrators as the Caesars had been. They built up a civilization that was Byzantine rather than Roman. Asiatic rather than European. This was due in part to the fact that Russia during the thirteenth century came under the domination of the Tartars and in the fifteen and sixteenth centuries under the spell of Byzantine theological and political ideals. Not until the reign of Peter the Great (1689-1725) did Russia become subject to the influence of European civilization in any measurable degree. Czar Peter did his best to Europeanize his empire but he was able to give it little more than a thin veneer.

THE ASIATIC  
INFLUENCE

PETER THE  
GREAT

Yet Russia played an important part in European diplomacy during the eighteenth and nineteenth centuries. The echoes of the French Revolution hardly penetrated the great steppes but when Napoleon was at the height of his power he made his artillery heard there. Every student of modern history has read of the Corsican's march to Moscow, his retreat through the snows and the collapse of his lordly venture. The Russians had a good deal to do with Napoleon's overthrow for it was his ill-starred expedition into the heart of the enemy's country that sapped the military strength of France and made Waterloo possible. Russia could conquer but was herself immune from conquest.

RUSSIA IN  
THE NINETEENTH  
CENTURY

Everything favored the development and maintenance of an absolutism in Russia—the vast extent of the country, the variety of races included in it, the illiteracy of the people, the militarism, the primitive rural civilization and the Oriental traditions. So the government became and remained despotic. From time to time the Czars made various gestures in the direction of popular government but these did not

HER  
POLITICAL  
DEVELOPMENT

mean much. The rulers were not willing to convey the substance of power to the representatives of the people. The wave of democracy which swept over Western Europe during the year 1848 led to the framing of new constitutions in France, Italy, and Prussia; it even compelled some political readjustments in Austria, but upon Russia it had virtually no influence at all.

Some years later, in 1861, the Czar Alexander II abolished serfdom in Russia and improved the economic status of the peasantry, but he failed to break the power of the landlords or grant the people any participation in the conduct of their national government. Alexander did, however, establish a certain measure of self government in the provinces and districts. In these the people were permitted by indirect election to choose delegates to district assemblies (*Zemstvos*) which were to exercise the right of levying local taxes as well as to make regulations concerning such matters as roads and bridges, schools, public health, public buildings, and poor relief. In the cities the Czar authorized the establishment of municipal councils for the exercise of those functions which the district assemblies performed in the provinces.

These local assemblies soon afforded rallying points for a liberal movement which aimed at political reform in the empire as a whole. They grew steadily more assertive in their demands for a constitution and for the calling of a national parliament. But this liberal movement did not make much progress until after the close of the nineteenth century. Liberalism, in the autocratic circle surrounding the Czar, was regarded as synonymous with revolution. The imperial authorities were so fearful of the very words constitution and parliament that they went to the ridiculous extreme of censoring them in the newspapers.<sup>1</sup> Meanwhile the teachings of Karl Marx and his disciples were turning many of the younger liberals to socialism and providing recruits for a Social Democratic party.

Thus the situation drifted until Russia engaged in her war of 1904-1905 against Japan and met defeat on land and sea. This national humiliation caused such widespread popular resentment that the government became alarmed. The Social Democrats in Russia grew more numerous and became more outspoken, despite the persecution to which they were

ALEXANDER  
II AND THE  
ABOLITION  
OF SERFDOM  
(1859-1866)

THE LIBERAL  
MOVEMENT  
(1866-1905)

THE WAR  
WITH JAPAN

<sup>1</sup> Sergius A. H. *Autocracy and Revolution in Russia* (New York, 1923) pp. 7-8

subjected The disorders which they were able to foment especially among the industrial workers now gave the authorities more worry than ever In the rural districts the peasants began seizing the lands of the nobility and pillaging their mansions Martial law had to be declared in many portions of the country Students in the cities started rioting and the universities were closed These widespread and serious disorders made it clear that the old policy of reaction and repression would have to be modified So the imperial government to secure its own preservation decided that a move must be made in the way of bending to the popular clamors for a national parliament.

In 1905 therefore the Czar issued a series of decrees which professed to establish a constitution for his people These decrees did not in fact abolish the autocratic system on the contrary they asserted the executive supremacy of the emperor and reaffirmed his right to exercise an absolute veto over all legislation They declared the Czar's ministers to be responsible to him alone On the other hand they made provision for a national parliament of two chambers namely an upper house or Council of the Empire and a lower house or Duma In the Council of the Empire half the members were to be appointed by the emperor and the other half chosen for nine year terms by the provincial assemblies the landowners the nobility the chambers of commerce and industry the church, and the universities Membership was restricted to persons over forty years of age who held academic degrees Members of the lower house or Duma were to be elected through the district assemblies or Zemstvos which were hereafter to be constituted on a basis of manhood suffrage It was stipulated that no discussion of the form of government or of military or foreign affairs should be allowed in the Duma but its assent was made necessary for the enactment of general laws

On paper this looked like a good start At least it brought Russia in 1905 to the point that England had reached in the days of Magna Carta (1215) But unhappily it did not prove to mark the beginning of a new era and for two reasons first because the Russian people did not know how to use their new endowment of power in moderation and second because neither the Czar nor his ministers accepted the new political arrangements in good faith

The Dumas which were elected under the new arrangement contained many liberals and radicals some of whom went so far as to

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AMOUNTED  
TO

declare that the mission of the Russian parliament was not to pass laws but to precipitate a revolution. Getting out of hand the first two Dumas were dissolved and in 1907 the suffrage was curtailed by imperial decree. Thereafter the parliament ceased to be representative and its functions became little more than advisory in character.

This was the situation when Russia entered the World War. The Duma was in session but could exert no influence upon the conduct of affairs. The amazing incompetence and corruption of the government however soon stirred all classes of the people to indignation. Ill equipped armies were sent into the field to be slaughtered. Measures for provisioning the civilian population broke down and the people of the cities went hungry while large quantities of foodstuffs were being illicitly shipped into Germany and Austria. Under the pressure of popular resentment the Duma became aggressive. Its members began to assail the government for its ineptitude. Encouraged by this show of independence the workers in the cities grew bolder and began a series of strikes. Thereupon the government issued decrees ordering the members of the Duma to go home and commanding the workers to terminate their strikes. The Duma refused to disband and the striking workers defied the government's decrees. The Revolution followed like a streak of lightning from the sky.

#### THE REVOLUTIONS OF 1917

The Revolution of March 1917 began at Petrograd just before the United States entered the war on the side of the Allies. It began as revolutions usually do. The striking workmen and the hungry population of Petrograd came out on the streets demanding food. The government tried to disperse the crowds by calling out the troops of the Petrograd garrison but the soldiers refused to obey orders. Instead they joined the mobs which were now thronging the streets. Like the Parisians of 1789 the rioting crowds now stormed the Russian Bastille—known as the Fortress of St. Peter and St. Paul—and set the prisoners free. Meanwhile a self appointed committee of the Duma assumed control of the situation, appointed a new ministry, established a provisional government and promised that a new constitution would be prepared. At this juncture the Czar was compelled to issue a decree abdicating the throne and was held prisoner with his family.

RUSSIA IN  
THE WORLD  
WAR

THE MARCH  
REVOLUTION  
(1917)

H O V I T  
B C N



Simultaneously with the formation of the provisional government the representatives of the workers organized in Petrograd a soviet of workers and soldiers delegates which without any formal authority began to exercise governmental powers. This soviet and the provisional government had different points of view and both undertook to issue decrees which were often contradictory. The soviet by a series of decrees which the provisional government was forced to accept, abolished the old military discipline and thus sapped the morale of the army. To prevent this working at cross purposes the provisional government and the soviet attempted a coalition but their joint efforts did not avail to check general disorganization.

As the situation grew worse a radical branch of the Social Democrats known as the Bolsheviks<sup>1</sup> secured for themselves an increased share in the management of soviet affairs and insisted that the Revolution must be an economic as well as a political one. They were supported in this demand by the fact that the workers were already seizing the factories while the peasants were driving out the landlords and taking the land as their own. These Bolsheviks did not constitute even a respectable minority of the Russian people but they had a definite program which the soldiers and workers could understand. Immediate peace and a dictatorship of the proletariat were their objectives. What is more they possessed capable leaders in Nikolai Lenin and Leon Trotsky two Bolsheviks who had been exiled by the Czarist government, but had now managed to make their way home again. Soon these leaders were able to get control of the soviets in Petrograd, Moscow and the other cities. Then with the aid of the troops they threw the provisional government out of the picture.

Thus the second stage of the Russian Revolution was accomplished. A congress of the soviets now set up a council of people's commissars with Lenin at its head while Trotsky took charge of the army. This new government forthwith deserted the Allies and proceeded to negotiate a separate treaty with Germany. The treaty was a humiliating one for Russia but the new soviet rulers accepted it in order that

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(1917)

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ECOMES A  
COMMUNIST  
STATE

<sup>1</sup> In Russian the term *Bolshevik* means majority as contrasted with *Menshevik* which means minority but in this case the Bolsheviks did not actually constitute a majority of the Social Democratic party as a whole.

they might be free to go ahead with their political and economic overhauling of the country. Meanwhile they issued a series of decrees which abolished private property and declared all railways, banks, factories, mines and land confiscated for the use of the proletariat. The Czar and his family were put to death; many members of the nobility, landowners, former Czarist officials and intelligentsia were killed, imprisoned or exiled; soviet commissioners were placed in charge of industries everywhere and the Orthodox Church was disestablished. Within a few months the country was transformed into a communist state—so far as decrees could accomplish it.

These drastic steps alarmed Russia's former allies, who had large stores of munitions and supplies lying at various Russian ports such as Murmansk, Archangel and Vladivostok. They sent troops to guard their supplies and the ports at once became rallying points for anti-Bolshevik leaders who undertook to start counter-revolutions. This action played into the hands of the Bolsheviks for it tended to unite the Russian people against what they looked upon as foreign invasions aiming to restore the Czarist autocracy. The counter-revolutionary movements were quickly suppressed.

#### THE OLDER SYSTEM OF SOVIET GOVERNMENT

In the summer of 1918 the Congress of Soviets, now known as the All Russian Congress, adopted a constitution for the Russian Socialist Federated Soviet Republic which had been prepared for it by the Bolshevik leaders who now began regularly to call themselves Communists. This constitution was not framed by men who had been elected for the purpose nor was it submitted to the Russian people for acceptance. But it served as a starting point and five years later became the model on which a constitution for the entire Union of Socialist Soviet Republics was framed.<sup>1</sup> The scheme of government set up by this latter document continued in operation down to 1936 when a new and quite different constitution was adopted.

By the constitution of 1923 Russia became a federated republic of seven constituent republics with a Union Congress of Soviets as the

<sup>1</sup> This constitution although not ratified until January 1924 was put into operation six months earlier. It is printed in W. E. Rappard and others, *Source Book: European Governments* (New York, 1937) Part V pp. 88-106.

supreme political authority.<sup>1</sup> This congress was made up of delegates from urban soviets (or local councils of workers) at the ratio of one delegate for every 25 000 workers and of delegates from the soviets of rural areas at the ratio of one delegate for every 125 000 peasants. No one was allowed to vote for delegates if he were an employer or if he had been in any way connected with the old Czarist administration.

AND THE  
UNION CON-  
STITUTION  
OF 1923

Between meetings of the Union Congress the supreme legislative power was vested in a central executive committee which in turn appointed a presidium or steering committee to do most of the work. Executive authority was devolved upon a ministry or Union Council of Commissars the members of which were ostensibly elected by the central executive committee but in reality were appointed by the leaders of the Communist party. Each commissar served as the head of an administrative department such as foreign affairs, war and marine, foreign trade, transport, labor, food and finance. The decrees and regulations of this Council of Commissars were made binding on the several soviet republics within the Union.

Under the constitution of 1923 wide powers were vested in these Union authorities including control of treaties and foreign affairs, the right to declare war and make peace, conclude foreign loans, regulate foreign trade, make contracts of concession, regulate railroads, posts and telegraphs, control the military establishment, establish a uniform currency and credit system for the Union, also a uniform system of taxation, and standardize the system of weights and measures. The Union Congress was also empowered to lay down general principles to be followed by the constituent republics in the matter of civil and criminal law, judicial procedure, labor legislation, and schools. Finally, the Union authorities were given the right to veto any law or decree of a constituent republic if in conflict with the constitution.

POWERS OF  
THE UNION  
GOVERN-  
MENT

But the formation of the U S S R did not abrogate the constitutions of the various constituent republics. Each of these republics retained its own soviet organization of government, although it became substantially alike in all of them. Ostensibly the seven republics were autonomous, but they had in fact little discretion except to carry out the orders which came from the Union government at

THE  
GOVERNMENT  
OF THE  
SEVEN CON-  
STITUENT  
REPUBLICS

These seven constituent republics were the Russian, White Russian, the Ukrainian, Turkoman, Uzbek and Transcaspian republics.

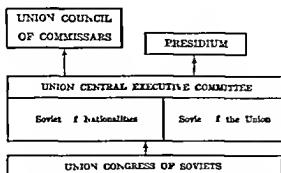
Moscow. Nevertheless within the bounds of general policy laid down by the latter the governments of the component republics retained authority over various local matters such as education, health, social insurance, the administration of justice in the lowest courts, and the encouragement of agriculture.

Take a look at the chart on the next page. It shows the way in which the government of the U.S.S.R. and the government of Russia proper (R.S.F.S.R.) were organized during the years preceding 1936. It will serve to indicate, in comparison with another diagram a few pages later, just how far the new constitution sets up a framework of government differing from the old. The outstanding features of the older plan were its complexity and cumbrousness. Between the people and their supreme rulers a long and devious route was provided—with all real responsibility lost on the way. The rural voter in his local soviet chose delegates to a district soviet, the latter in turn named delegates to higher soviets, and the latter sent representatives to the All Union Congress which appointed a central executive committee and this body chose the supreme executive authorities. The industrial worker in the cities was given a more direct and more weighty representation because he was deemed to be more reliable in his allegiance to the soviet system.

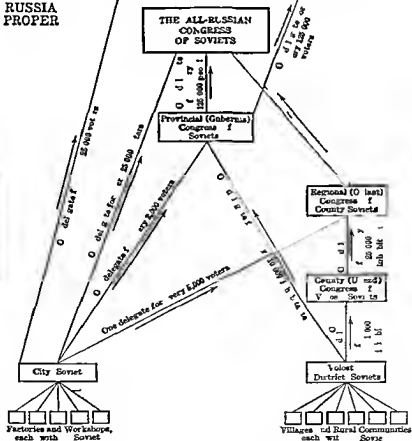
Another outstanding feature of the scheme of government which functioned in the U.S.S.R. prior to 1936 was the basis upon which the people obtained representation in the legislative bodies. In England, France, and the United States the people are asked to choose their representatives on a *geographical* basis—that is, the voters of a ward, county, arrondissement, constituency, or district are given the right to elect the members of the lawmaking body. No matter what their vocation, all those who reside in a given area vote together. Thus a member of Congress in the United States may represent a district in which there are farmers, industrial workers, miners, railroad operatives, professional men, shopkeepers, truck drivers, unemployed workers on relief, and all the rest. He represents them as a single unit of population without regard to their varied circumstances or conditions of daily life. The American theory of representation is that a voter's interests are determined by the place where he lives rather than by the vocation which he follows. In other words, the geographical system of representation assumes that *locality-consciousness* is stronger than *class-consciousness*. That is why a lawyer is deemed to be a fit and

THE BASIS  
OF REPRESENTATION

## THE UNION



## RUSSIA PROPER



proper representative of shopkeepers or farmers if he resides in the same congressional district with them, while a farmer or a shopkeeper is not regarded as eligible to represent them if he lives outside the district

The soviet system sought to establish a *vocational* basis of representation. It is true that geographical areas had to be utilized also but only as a convenient way of making the vocational basis workable. People of different employments voted separately—miners in one group, iron workers in another, soldiers in a third, peasants in a fourth, and so on. Each group chose representatives from its own class. A miner or an iron worker in the Union Congress did not represent Kiev or Odessa or Minsk or the city from which he happened to come; he represented a class of people irrespective of their residence. According to its admirers this soviet plan provided an unmeasurably better form of representation than the world had ever tried before, for it used as its basis real groups with a common purpose, in contrast with geographical districts which were declared to be nothing but meaningless conglomerations.

As a theory this arrangement had a good deal to be said for it. The geographical basis of representation is defective because it leaves out of account the fact that every voter belongs to a class or group and is not merely the resident of a district. His class allegiance may be far stronger than his allegiance to the locality; usually it is. Business men, wage earners, farmers, and professional men do not overlook the interests of their own economic and social fellowship. There is no essential bond between two voters of different occupations for the mere reason that they happen to live in the same county. Neither can it always be taken for granted that men of the same occupation will think alike on questions of public policy. On the whole, however, it may fairly be argued that occupation forms a better basis in this respect than geography can hope to provide under modern conditions of life.

But here is another way of looking at the question. Can the well-being of the whole people be best promoted by distributing political power according to channels through which the various classes derive their livelihood? The Soviet theory of government is based upon the principle that a man's occupation determines his attitude on questions of public policy. But should it be encouraged to do so? In the United States we have gone

WHY  
VOCATIONAL  
REPRESENTATION IS  
PREFERRED

THE ARGUMENT  
FOR IT

THE ARGUMENT  
AGAINST IT

on the principle that men are American citizens first,—miners or iron workers afterwards. We have tried to maintain the doctrine that a man's interest in the welfare of the nation as a whole should transcend his interest in any class or organization. Accordingly while a congressman is elected by the voters of a district, he does not (if he is the right kind of congressman) merely represent that district. He is supposed to represent the whole people, and he is paid by the whole people of the United States for doing it. One frequently hears complaint that the average congressman does not always think in such terms but is too exclusively concerned with the interests of his own district. Now if he were elected by a class would he not feel in duty bound to represent that class, and could it properly be urged upon him that his function is to serve the whole people? Would not the vocational plan of representation narrow the horizon of the representative to an even greater extent than the geographical arrangement does.

Vocational representation, in any event, is no longer required by the new constitution. Each administrative district is permitted to make its own rules concerning the time place and procedure for election subject to the requirement of universal suffrage and a secret ballot. In most cases the voting takes place on an occupational rather than on a geographical basis because the people have been accustomed to this procedure but all those who are not employees (e.g. housewives, handicraftsmen shopkeepers, professional men etc.) now vote by districts and not by occupations. The friends of vocational representation argue that the system did not prove unsatisfactory but that it is no longer needed because all class antagonisms and divergences of vocational interest in Russia have now disappeared. When you have liquidated all classes but one and all parties but one, and all leaders but one, it does not much matter what basis of representation you use, or indeed whether you use any basis at all.

THE  
OUTCOME  
OF THE  
EXPERIMENT

# THE STALIN CONSTITUTION (1936)

Early in 1935 a commission of thirty-one members, under the chairmanship of Josef Stalin, secretary-general of the Communist party was appointed to frame a revised constitution. More than a year later a draft was prepared and published for discussion by the people. Then, in the closing weeks of 1936 this draft was submitted to the All Union Congress and including some amendments was

FRAMING  
A.D.  
REIFYING  
THE NEW  
ORGANIC  
LAW

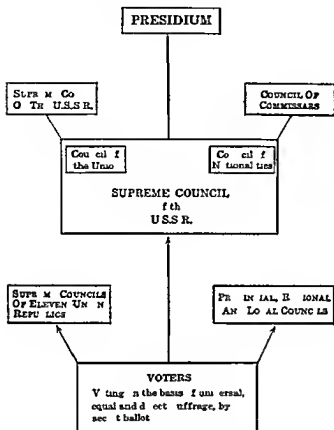
adopted with virtual unanimity. It went into force without ratification by the people. Here is the way in which a eulogist of the proceedings describes the final scene. Then the Congress decisively refused a roll call on the final adoption which they carried with cheers and singing. Without the help of a band but firmly and clearly the 2016 delegates sang three stanzas of the *International*. December 5th was declared a national holiday—Day of the Constitution.<sup>1</sup>

Let the balalaikas ring  
 Raise anew the chorus  
 Isn't it a happy thing—  
 The old that lies before us?

The constitution of 1936 (commonly known as the Stalin Constitution) declares the U S S R to be a socialist state of workers and peasants. It is also declared to be a federated state on the basis of the voluntary association of soviet socialist republics with equal rights. There are now eleven of these constituent republics instead of the original seven. The increase results from the creation of two new ones (Kazak and Kirghiz) together with the division of Transcaucasia into the three republics of Armenia, Georgia and Azerbaijan. The Union government is given authority over foreign affairs, national defense, the acceptance of new republics into the federation, foreign trade, national economic planning, taxation and revenues, the administration of banks, industrial and agricultural establishments, as well as trading enterprises of All Union significance, transport and communications, money and credit, social insurance, public debts, citizenship, judicial organization and procedure, civil and criminal law, together with the establishment of basic principles to be observed throughout the Union in the field of education and public health. The All Union government is likewise given power to ensure the conformity of the constitutions of the associated republics with its own. And in case of a conflict between a law of the Union and that of a constituent republic the former prevails. The constitution can be amended by a two-thirds vote in the two chambers of the Supreme Council (*Verkhovny Soviet*) or All Union parliament.

Legislative power in the U S S R is vested by the new constitution in this Supreme Council, composed of two chambers. This body is the successor of the All Russian Congress of Soviets under the old constitution. The two



THE GOVERNMENT OF THE U S S R UNDER THE  
1936 CONSTITUTION

chambers of the Supreme Council are known as the Council of the Union and the Council of Nationalities. The former is made up of deputies chosen by popular vote from election districts—one for every 300 000 population. The Council of Nationalities is also chosen by popular vote from election districts, but its members are distributed on a uniform basis to the various constituent republics (e.g. twenty-five to each constituent republic irrespective of its population) and to other existing political units. All elections are by secret ballot with universal suffrage. Citizens who have reached the age of eighteen years (with the exception of criminals and mentally deficient persons)

are entitled to vote. The two chambers are of about the same size and enjoy an equal right to initiate legislation.

To become effective, a law requires the concurrence of both chambers. No distinction is made, as in some other countries, between money bills and other projects of legislation. In case of a deadlock between the two chambers the disagreement is settled by a joint committee of conference as in the United States. If this committee cannot effect an agreement or if its decision does not satisfy one of the chambers the question is reconsidered by both bodies. And as a last resort the presidium (see below) may dissolve the chambers and order a general election to decide the issue.<sup>1</sup> Sessions of the two chambers begin and end concurrently. By a majority vote the two chambers can enact any law and by a two thirds vote they can amend the constitution.

Between sessions of the Supreme Council its powers are vested in a presidium or standing committee of thirty seven members which it elects. This body it is anticipated will be the real legislature; the Supreme Council will probably do little more than bear reports and ratify the acts of the government. The presidium is also given a number of special powers by the constitution: for example, the granting of pardons, the awarding of decorations, and the appointment of investigating commissions. In addition it appoints and may remove the high command of the armed forces; it may decree a general or partial mobilization, and may also declare war if the Supreme Council is not in session; it ratifies treaties and gives interpretations of the law.<sup>2</sup>

The presidium of thirty seven members will function during most of the year as the legislative organ of the Soviet Union while supreme executive power is vested by the constitution in the Council of People's Commissars of the U.S.S.R. This body, which corresponds roughly to the cabinet in other governmental systems, is made up of commissars or ministers who are chosen by the Supreme Council at a joint session of its two chambers, but this choosing is merely a perfunctory ratification of decisions made by the Politbureau of the Communist

In the discussions which preceded the adoption of the new constitution a proposal was made to eliminate the Council of Nationalities and establish unicameral legislature. But Stalin successfully argued against this proposal, using much the same arguments that were advanced in the American constitutional convention of 1787 for the equal representation of the states in the Senate.

party So with cabinet responsibility By the terms of the constitution the Council of People's Commissars of the U S S R. is responsible to the Supreme Council (to both chambers of it in joint session) but its only real responsibility is to the party bureaus

The Council of People's Commissars includes two types of commissariats There are a number of All Union commissariats which function over the entire U S S R. and have no duplicating commissariats in the eleven constituent republics These All Union commissariats have charge of national defense foreign affairs foreign trade railways water transportation communications (i.e. posts and telegraphs etc.) and heavy industry There are no corresponding commissariats in the constituent republics because the latter have no jurisdiction in these matters But the Council of People's Commissars also includes a number of Union Republic commissariats or ministerial departments which are duplicated in each of the eleven republics These deal with matters over which these constituent republics have some jurisdiction namely agriculture food supplies finance light industry internal trade justice health, and other local affairs Their work, accordingly is concerned with the proper coordination of administrative effort in these last named fields throughout the Union

THE COM  
MISSARIATS.

The constitution of the U S S R. provides that the All Union commissariats administer their respective fields directly or through subordinate organs which they appoint, but that the Union Republic commissariats shall perform their administrative functions as a rule through similarly named commissariats in the constituent republics The latter are appointed in each case by the authorities of these republics Or to put the matter in another way the control of administrative work is centralized but the performance of it is to a considerable extent decentralized To keep things in articulation it is provided that each of the All Union commissariats shall maintain a representative at the capital of each republic and that each republic shall have a representative at Moscow The latter has a right to sit with the All Union Council of People's Commissars whenever any matter affecting his own republic is under consideration

RELATION  
BETWEEN  
THE CENTRAL  
AND LOCAL  
ADMINISTRATIVE  
AUTHORITIES

Each member of the Council of People's Commissars of the U S S R. is assisted by a group of advisers In addition there are numerous special advisory boards and some boards which have more

thao advisory powers Chief among these are the Couocil of Labor and Defense the State Planing Commission the Committee on the Arts and the Committee on Higher Education The first of these bodies is entrusted with the formulation of general plans for strengthening the economic phases of the national defense while the second coordinates the planned economy of the various republics with that of the Union But neither of them is provided with the machinery for carrying its plans into operation The execution of all plans is entrusted to the Council of People s Commissars or to the individual commissariats

The constitution of 1936 makes no provision for a president of the Soviet Union The All Uoion Council of People s Commissars has its own chairman but he is not a prime minister in any sense nor does he rank as the titular head of the Union government The ceremonial functions usually performed by the head of the state in other countries are in Russia entrusted to the president of the central executive committee Michael Kalinin holds this office at the present time but the world rarely hears of him When foreign ambassadors come to Moscow they present their credentials to the chairman of the presidium No foreign diplomatic ageots are accredited to the governments of the various constituent republics although the Union constitution declares these republics to be autoomous They are eveo given the right to secede from the Union if they so desire But this right to secede does not give aoyooe the right to advocate secession Such advocacy would be promptly branded as counter revolutionary and would result in the quick liquidatioo of everyone concerned in it

Does the new constitution establish responsible government through ministerial responsibility in Soviet Russia? The ans er is that technically it does The All Union Council of People s Commissars is in effect a ministry Its members function together as a cabinet and individually as cabinet ministers They are appointed by the Supreme Council or Union parliament and are responsible to that body On paper there is no essential difference between Soviet Russia and the French Republic in the matter of ministerial responsibility But in practice there is a great deal of difference The Soviet commissars are not actually chosen by the legislative body

ADVISORY  
AND  
PLANNING  
BOARDS.

NO  
PROVISION  
FOR A  
SOVIET  
PRESIDENT

IS THERE  
MINISTERIAL  
RESPONSI  
BILITY IN  
RUSSIA.

They are handpicked by the Politbureau of the Communist party which in turn is made up of men appointed by the secretary general of that party. They are not responsible to the legislative body or even to the presidium, save in a purely technical sense. Whether a commissar holds his post or loses it depends upon his standing with the party leaders not with the parliamentary leaders.

### THE SOVIET JUDICIARY

With one exception all the courts in Soviet Russia are state courts not federal courts they are judicial organs of the constituent republics not of the Union. But they are uniform in all these republics. And Russian political philosophy by the way does not look upon the judiciary as a separate branch of the government vested with a position of semi independence as in other countries. It is part of the regular administration like a commissariat of finance or of agriculture. Its function like those of the latter is to help carry out the general policy of the government and more particularly to safeguard the new social order against the machinations of its internal enemies. While the courts endeavor to protect the rights of all citizens as against one another they do not have the function of protecting the citizen against his government for according to the Soviet theory of justice it is unthinkable that the citizen should ever need such protection. He would need it only when he fails to agree wholeheartedly with the government and then he would not deserve it.

ITS GENERAL  
STATUS

There are three gradations of courts in the several constituent republics. First are the people's courts. One such court is provided for every district. Its personnel consists of a judge who is elected by the people of his district and two assessors or citizen judges who are selected from a panel of citizens. This panel is prepared by the local soviets through a special committee and no one who is selected to serve as an assessor or citizen judge can be required to function for more than six consecutive days in any year. The judge and his two lay colleagues have equal powers in deciding the cases that come before them. This is in accordance with the Soviet principle that the administration of justice should not be wholly removed from the hands of the workers. In the United States this idea of letting the people participate in the administration of justice is embodied in the jury system, but trial by jury has never obtained any foothold in Russia. More than seventy per

THE LOWER  
COURTS

cent of all the cases tried in the courts of Soviet Russia come to the people's courts although these courts have no jurisdiction over crimes against the state unless such cases are brought before them by the public prosecutor which does not usually happen

Above the people's courts are regional courts with judges who are elected not by popular vote but by the soviets of the regions which they serve. The term of these judges is five years. Regional courts serve as courts of appeal from the people's courts and they also have original jurisdiction over various offenses against the government such as counter revolutionary actions and misconduct on the part of public officials. While the people's courts deal with all manner of small controversies and minor crimes the trial of serious crimes is within the jurisdiction of the regional courts from the outset

Each of the eleven constituent republics has its own supreme court, but they are all constituted in the same way. The judges are chosen for five year terms by the supreme councils or parliaments of the respective republics but they must be persons who have served in the lower courts. These supreme courts hear appeals from the regional courts they also have original jurisdiction over cases of exceptional importance which may be brought before them by the public prosecutor. When high officials of government in any of the republics are accused they are brought to trial in one of these courts

Finally there is the supreme court of the Soviet Union. Its judges are chosen by the Supreme Council (both Houses in joint session) for fixed terms of five years. The Union constitution declares them to be independent and subject only to the law but this high tribunal does not have any of the usual safeguards of judicial independence. It contains more than thirty judges and sits in three sections criminal civil and military. These sections hear appeals each in its own field where ever it is alleged that a decision rendered in one of the supreme courts of the republics contravenes the general legislation of the Union. The supreme court of the Union also deals with conflicts between the republics and is the place of trial for any accused member of the Union government. It may when called upon render advisory opinions as to the constitutionality of laws and decrees but it has no power to declare Union laws unconstitutional

REGIONAL  
COURTS.

SUPREME  
COURTS OF  
THE SEVERAL  
REPUBLICS

THE SUPREME  
COURT OF  
THE SOVIET  
UNION

Outside the range of the regular judiciary there are various special courts, such as juvenile courts land courts courts of arbitration and military courts. A special people's court deals with in-  
 fractions of the labor laws. Military courts do not al-  
 ways confine themselves to the trial of military person-  
 nel but take civilian offenders within their purview at times. Proce-  
 dure in all the courts whether regular or special is lacking in the  
 traditional safeguards. There is no requirement that the accused  
 shall have a public trial because the constitution permits exceptions  
 to be made and they are made. The constitution also guarantees to  
 the accused the right of defense but persons charged with counter-  
 revolutionary crimes are frequently given little or no opportunity to  
 defend themselves. There is no provision for anything like a writ of  
 habeas corpus wherewith to get anyone out of jail or back from  
 Siberian exile. There are no regular jury trials. Extreme penalties  
 are imposed for offenses which in other countries would not be re-  
 garded as flagrant, such as trying to leave Russia without a permit or  
 concealing foreign currency.

THE  
SPECIAL  
COURTS

The attorney general or chief public prosecutor for the Soviet  
 Union is chosen for a seven year term by the Supreme Council. The  
 constitution endows him with the highest responsi-  
 bility for the effective execution of the laws. His  
 duty includes that of investigating the acts of Union  
 officials and of prosecuting them before the supreme  
 court of the Union if the occasion arises. There are also chief prose-  
 cutors in the constituent republics they in turn, appoint regional  
 and district prosecutors. Since there are no practicing lawyers in the  
 usual sense the defense of accused persons in Soviet Russia is under-  
 taken by members of a society of advocates organized under the  
 supervision of the courts. These advocates must render assistance to  
 defendants whenever called upon and must do it without charge if  
 the court so orders.

THE  
PUBLIC  
PROSEC-  
UTORIAL

The organization and control of local government is left to the in-  
 dividual republics and consequently varies somewhat in different  
 parts of the Union. But the differences are not great or  
 fundamental. There are provinces districts, cities and  
 rural communities each with its governing council  
 (elected by universal suffrage) which appoints various commissars to  
 do the administrative work. These commissars like the French pre-  
 fects have direct responsibility to the local authorities who have ap-

LOCAL  
GOVERN-  
MENT

pointed them and to the higher authorities whose general policies they must carry out

Finally the constitution of 1936 contains a comprehensive bill of rights. It guarantees the right to work and the right to rest, the right to education freedom of speech of the press and of assembly. It forbids arbitrary arrests or detention and assures equal rights to all citizens irrespective of race or nationality. It goes further than any other constitution so far as formal guarantees of personal liberties (as distinguished from property rights) are concerned. But there is as yet not the slightest indication that these guarantees will be effective in practice. Strict control of the press the radio the theatre and the schools has not been in the least relaxed. Ruthless terrorism is still directed against every symptom of organized opposition to the party in power. Secret trials and unadvertised executions continue as before. The glaring discrepancy between the constitution and the facts of Soviet life can hardly be overlooked by anyone however sympathetic he may be.<sup>1</sup>

The new rules relating to property rights are interesting and significant. Russia during the past twenty years has built up a socialist economy. The constitution distinguishes therefore between socialized property—that is property which is owned by the state or by cooperative groups and personal property—which may be owned by individual citizens. Socialized property includes land waterways mine factories railways means of communication banks—all the chief agencies in production or distribution. It also includes cooperative property such as the collective farms which have been organized under the Artel system as will presently be explained.

Personal property on the other hand embraces income from labor savings deposited in state banks or invested in government bonds dwelling houses occupied by their owners automobiles maintained for personal use tools furnishings and other personal belongings. A Russian citizen may now acquire a large amount of property but it must be solely for his own use. He cannot acquire property to be used in the exploitation of others—that is to provide private capital for industry or

<sup>1</sup> For a vivid presentation of this point of view by a person who probably knows Russia better than any other living American see the article on Russia "Gold Brick Constitution" by W. H. Chamberlain in *The American Mercury* Vol. XLII, pp. 181-186 (October 1937).



to employ labor. All this of course is a considerable step away from pure Marxism. But the possession of personal property is not necessarily irreconcilable with a socialist economy. It does not involve a return to capitalism so long as the distinction set up by the new constitution is maintained, but the maintenance of this distinction may not prove to be easy. And in any event it must involve the recrudescence of classes in Russia, for there can be no 'classless society' if some are permitted to accumulate personal property worth millions of roubles while others have none at all. Is it easy to believe that all class distinctions and class antagonisms have been abolished in a country where some of the people are permitted by the constitution and laws to earn ten times as much as others, live in mansions own automobiles and wear fine raiment, while the mass of the workers and peasants are barely able to provide themselves with the absolute necessities of life? Communist leaders are fond of declaiming that the only liberty for the worker in democratic countries is liberty to starve. Yet the figures demonstrate that the per capita consumption of food by the workers in the United States is vastly greater than in Russia. To the Communist mind however this only goes to prove the truth of the cynic's proverb that there is nothing so false as facts except figures.

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**POLITICAL HISTORY AND BACKGROUND** Alfred Rambaud *History of Russia* (3 vols. London 1913) is a convenient source of information on the political history of Russia before the outbreak of the World War. A more recent work is G. Vernadsky's *History of Russia* (New Haven, 1929). James Mavor's *Economic History of Russia* (2nd edition, London 1925) is a comprehensive book in its field. Events immediately preceding the revolution are explained in A. Meyendorff's *Background of the Russian Revolution* (New York, 1929) also in Baron Korf's *Autocracy and Revolution in Russia* (New York, 1923). A volume by P. P. Gonsky and V. J. Atsov entitled *The War and the Russian Government* (London 1929) shows how the military mismanagement hastened the political collapse. On the revolution itself a useful book is W. H. Chamberlain, *The Russian Revolution 1917-1921* (2 vols. New York, 1931).

**THE SOVIET CONSTITUTIONS OF 1918 AND 1923** An English translation of the Russian constitution of 1918 is printed in H. L. McBain and Lindsay Rogers *The New Constitution of Europe* (New York, 1920) pp. 376-400. The All Union constitution of 1923 is printed in W. E. Rappard and others *Source Book in European Government* (New York, 1937) Part V pp. 88-106. See also Andrew Rothstein, *The Soviet Constitution* (London 1923) the same

author's *Soviet Russia* (London 1924) W. R. Batsell *Soviet Rule in Russia* (New York, 1929) and B. W. Maxwell *The Soviet State* (Topeka, Kansas, 1934). An interesting booklet by Vera Micheles Dean entitled *Soviet Russia, 1917-1933* (New York, 1933) gives a concise survey of developments during that period.

**THE NEW CONSTITUTION** The All Union constitution of 1936 is printed in W. E. Rappard and others, Part V, pp. 107-129, and as a pamphlet by the Carnegie Endowment for International Peace, No. 327 (New York, 1937). Josef Stalin *Stalin on the New Soviet Constitution* (New York, 1934) is naturally authoritative. Mention should also be made of Samuel N. Harper *The Government of the Soviet Union* (New York, 1938). An excellent unbiased survey of *The New Constitution of the U. S. S. R.* by Vera M. Dean is issued as a Foreign Policy Association Report, Vol. XIII, No. 3, April 15, 1937. The volume on *The New Soviet Constitution* by Anna Louise Strong (New York, 1937) is glowingly partisan.

See also the references at the close of the next chapter.

## CHAPTER XLI

### SOVIET RUSSIA POLITICAL AND ECONOMIC PROBLEMS

The people neglect their liberties but under some delusion —*Edmund Burke*

In his speech to the All Union Congress of 1936 when he presented the new constitution to that body Josef Stalin gave definite assurance that no change was being made in the dominating position of the Communist party which he praised as being composed of the most active and politically conscious citizens. The Communist party remains the only party organization in Russia. No other group under the new constitution (Article 141) is permitted to put forward candidates for election although the Communist party has at present fewer than two million regular members in a total Russian population of 170 000 000. It is true that the privilege of proposing candidates is also accorded by the constitution to social organizations of working people cooperatives youth associations and cultural societies but all of these are strictly Communist organizations under the party's control.

GOVERN  
MENT AND  
PARTY

No one can hope to understand the actualities of government in the U S S R unless this complete domination of all its branches by the Communist party is clearly grasped at the outset. Not only is it the sole recognized political party with a monopoly of nominations but all important decisions on questions of governmental policy are made by its conventions committees officials and bureaus especially by the political bureau of the central committee of the Communist party of the U S S R (commonly known as the Politbureau) as will presently be explained. The government as such does not make these decisions it merely ratifies them. No conflict of authority or opinion can arise between government and party because they are one and inseparable. The party indeed is the ultimate source of power. It supplies the motive power in government and is the great unifying force.

THEIR  
RELATION

In illustration of this it may be pointed out that Josef Stalin is the real head of the government under the new constitution as under the old. He is not president of the U S S R nor does he hold any other governmental office of high importance in it. His power comes from the fact that he is the secretary general of the central committee of the Communist party a position which he has held since 1922.<sup>1</sup> As such, however, he is the most powerful figure in Russia for he controls the political bureau of the party which formulates all party policies and by so doing determines the program of the government. Stalin selects the members of this bureau (although they are ostensibly chosen by the party's central committee) and thus dominates the bureau's activities.<sup>2</sup> The Politbureau in turn is the steering committee which tells the government what to do.

Americans should have no difficulty in understanding the relationship between government and party which has been outlined in the foregoing paragraphs. We have had exactly the same situation time and again in our own state and municipal governments. Repeatedly Americans have seen governors and mayors legislatures and city councils merely ratifying decisions already reached by party leaders in secret conclave. They are not unacquainted with the spectacle of a party leader telling public officials what to do and how to do it. Whole books have been written about the Tweeds and Crokers the Vases and Ruefs the Hynkas and Hinky Dinks of American politics. Stalin and his Politbureau are merely the Russian counterpart of the American party boss and his inner ring of lieutenants who do his bidding. Like the latter the Russian political bureau meets behind closed doors and publishes no record of its deliberations so that the first intimation of its decisions is brought to the people by official decrees issued under the signature of the regular governmental authorities.

In view of the complete supremacy which the Communist party has thus developed in relation to the Soviet government it is desirable that the organization of this party should be explained. And in this connection it should be repeated that the membership of the

Stalin also a member of the Union Central Executive Committee and member of the Council of Labor and Defense but his power does not come from either of these sources.

He then only remains a member of the Politbureau as it was constituted at the time of Lenin and the All-Union Congress has been cut down to avoid its imprisonment.

Communist party constitutes a very small minority of the Russian people. About half its members are industrial workers; the rest are peasants, government employees, army and navy personnel, white collar employees, and intellectuals. Admission to membership is given only to those who have proved themselves sound in the faith, and a period of probation is invariably required. This probationary period is relatively short (a year or so) for industrial workers; it is longer in the case of peasants, and for intellectuals it is longer still. No member of the deprived categories, such as ministers of religion or monks, former landlords, employers or traders, is admitted under any circumstances. From time to time, moreover, there is a purging of the ranks with the elimination of those whose partisan loyalty happens to come under suspicion.

ORGANIZATION OF THE  
COMMUNIST  
PARTY

MEMBERSHIP

Discipline and loyalty are the fundamental obligations of every Communist. Freedom of discussion is tolerated within the party until a decision has been reached by the party congress or its central committee; then all argument, criticism, and differences of opinion must cease. This rule not only applies to the rank and file but is enforced in the highest circles of leadership as well. Every member of the party must unhesitatingly adhere to what is known as the party line in Communist theory and practice, with no deviation either to the right or the left. Expulsion from the party follows any show of non-conformity, however slight. In flagrant cases the recalcitrant party member may find himself stigmatized as counter-revolutionary and liable to be exiled or otherwise punished under the laws.

PARTY  
DISCIPLINE

The base in the organization of the Communist party is what used to be called the cell or nucleus. It is now designated in official parlance as the primary party organ. A cell may be formed in any factory, village, store, office, or collective farm—or even on a Soviet ship at sea—provided there are at least three persons who subscribe to the party program, submit to party decisions, and pay membership dues. It may also be formed in any college, hospital, or other non-industrial establishment. In large industries there is a cell or primary party organ for each department, so that there are said to be over 150,000 of these cells in the entire country. But this does not mean that anyone can belong to a primary party organ. Admission is restricted to workers by hand or brain (including soldiers and public officials), and every

THE  
CELLS

applicant must be recommended by a designated number of Communists who are already members of the party in good standing. The admission of older workers is not favored and recruits are now drawn mainly from the ranks of the new generation of workers who have been duly schooled in Communist ideology as members of the Comsomols or Communist League of Youth.<sup>1</sup>

Something should be said concerning this organization since the hopes of the Communists for the perpetuation of their supremacy rest mainly upon it. The Comsomols are associations of young people including both sexes between the ages of fourteen and twenty three. Their total membership is said to be about six millions. This is made up of cells which have been formed not only in factories and offices but in schools and colleges as well as among young people in the agricultural villages. Admission is granted more or less freely to the sons and daughters of workers and peasants but not to the children of shopkeepers or other bourgeois vocations. Once enrolled in a Comsomol group the youthful members are vigorously indoctrinated with Marxist philosophy. If they show themselves adequately imbued when they reach the age of eligibility they are then qualified for admission to one of the regular primary party organs. This hope is continually held out to them as an inducement to show enthusiasm for the cause.

Subsidiary to the Comsomol and serving as feeders for it are two organizations of younger boys and girls known as the Pioneers and the Octobrists. Boys and girls between the ages of ten and sixteen of whatever parentage may be admitted to provisional membership which is made permanent after they have shown themselves receptive to the teachings of their leaders who are provided by the Comsomols. Thus from the age of ten years upwards the Communist party makes elaborate provision for the political training of the younger generation.

Above the party cells are the district provincial and regional party conventions. Each elects delegates to the one immediately above it. Finally there is a Communist party convention or congress for the entire U.S.S.R. This body was accustomed to meet each year during the earlier

To designate a governmental agency is the Russian practice to telescope several words into one. The Communist International had a Workers Progress Administration they would not call it WPA but Worker's Progress Administration.

stages of Soviet rule: then it met every two or three years but of late its gatherings have been even less frequent. With its two thousand delegates and alternates it is an unduly assemblage and can do little more than listen for a few days to keynote speeches. Obviously this All Union convention is the supreme party organ but it cedes all its powers during the long interval between meetings to a central committee (of about seven hundred members) which it elects by secret ballot. This committee in turn, selects from its own membership a secretariat which keeps the records, a political bureau (Politbureau) to formulate party policies, and an organization bureau (Orgbureau) which has charge of party propaganda, supervises the subordinate conventions and may either promote or demote members of the party.

Obviously the members of these bureaus are elected by secret ballot at a meeting of the central committee. But in practice the secretary general of the committee (Stalin) virtually dictates the membership of both bureaus, the Politbureau especially and is himself a member of the latter. Everything done by the two bureaus is ratified in due course by the central committee and eventually by the All Union convention of the Communist party at its next session but such ratifications are merely matters of form. The real power rests with the secretary-general of the central committee and the two bureaus which he controls.

Not only, is governmental policy determined by these two party bureaus, but the selection of all the leading government officials is made by them. The Politbureau determines the policies and the Orgbureau determines who shall have a part in carrying the policies into effect. The decisions of the Politbureau, after being ratified by the central committee at one of its monthly meetings, are often promulgated in the form of decrees signed by Stalin as secretary general of the party. These decrees are binding upon every Communist, even upon the highest officials of the government. Thus it constitutes a curious arrangement under which the party leaders, as such, issue decrees having the force of law. In other words the dictatorship of the proletariat has become the dictatorship of the Communist party. The Council of People's Commissars is designated by the constitution as the highest executive and administrative organ

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ERNMENT  
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of state power but this declaration does not mean what it says for every commissar must be a Communist and as such must obey the instructions of his party leaders. In consequence the supreme executive organ of the U S S R is not supreme at all but obeys the decrees of the party just as any non-official member must obey them.

One is likely to obtain therefore a wholly misleading impression concerning the realities of Russian government by merely reading the constitution of 1936. The eulogists of this document assure us that it is democratic in every line—with its provisions for universal suffrage secret ballots a bicameral parliament and a responsible ministry. Not a perfect democracy they confess but a million times more democratic than the most democratic bourgeois republic. Surely it is giving a new definition to democracy when a political party comprising in its membership only a small fraction of the whole people arrogates to itself a monopoly of all the nominations for public office creates its own party conventions committees and bureaux appoints all the higher officials of government and then usually without even consulting these officials directs what they shall do. If this be a democracy approaching perfection one is tempted to recall the saying of Edmund Burke that a perfect democracy is the most shameless thing on earth.

#### ECONOMIC PHASES OF RUSSIAN GOVERNMENT

The Russian Revolution when the Bolsheviks took hold of it in November 1917 became an economic revolution. It aimed to abolish capitalism and to establish a communistic state—to place control of all power wealth and property in the hands of the proletariat. The constitution of 1918 abolished private property in land and declared every foot of Russian soil to be the patrimony of the state. It added that the nationalized land was to be apportioned among agriculturists in the measure of each man's ability to cultivate it. This constitution went farther and declared all forests all treasures of the earth all waters of general utility and all equipment whether animate or inanimate to be the property of the state. Such a declaration was not directed primarily against the nobility for the peasants had driven out their landlords and taken the land as well as the stock and equipment that was necessary to utilize it. The government although declaring the

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land to be state property did not at once attempt to dispossess the peasants but allowed them to keep and use the land for the time being as though they were the legal owners

Meanwhile in the cities the owners of factories were ousted where ever they refused to accept the decrees of nationalization. Commissars appointed by the government were placed in charge of the industries but these officials were expected to manage them in harmony with the wishes of the workers who functioned through workers' councils or soviets, one for each factory. The workers were paid in scrip which entitled them to obtain food and supplies from the government depots, for all private stores and all private trading were declared to be abolished. But this plan did not prove successful. The production of the factories declined in part because the workers were now their own masters and could not be subjected to discipline in part because they were underfed and unable to work at full efficiency in part, also because the only people who could manage the technique of industrial production had been put out of the way.

The factories moreover found it impossible to get enough raw material. The government, as it turned out, was not able to provide this material nor could it supply enough food for the workers at its various depots hence the whole population of the cities had to be placed on short rations. The peasants would not supply the industrial centers with food stuffs unless the cities would guarantee in turn to provide the rural districts with manufactured products and thus under the existing conditions they were unable to do.

Production fell off alarmingly and the communistic basis of industry had to be modified. In 1921 the government decided to restore private management of industry and private trading to a limited extent. This new economic policy (commonly known as NEP) permitted individuals and groups of individuals to own and operate workshops and factories especially small establishments on the stipulation that the government be given a share in the ownership. It allowed shops and stores to be opened under government license. It even invited foreign capitalists to come and manufacture or trade in Russia under concessions. Here was a curious intermingling of state and private capitalism. The Bolshevik leaders frankly admitted that communism had been applied on too extensive a scale and that there was no al-

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INDUSTRY

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OF THE  
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N (1921)

ternative but a partial restoration of private enterprise until the industrial life of the country could be stabilized. Thereafter it was hoped communism would once more spread itself over the whole field of industry by easy stages.

Under the spur of the new economic policy both agriculture and industry revived. Farmers began to rent land and to employ hired laborers. This class of employer farmers (*kulaks*) rapidly increased. Industrial production went forward into higher figures. But the Communist leaders became alarmed at the inroads which capitalism seemed to be making and decided upon a reversal of policy. The *Nep-men* and *kulaks* were chastised in various ways and in 1928 the first Five Year Plan was announced as a substitute for the earlier way of doing things. This plan contemplated the entire replacement of *kulak* farming by collective agriculture and the stimulation of Soviet industry to a point which would make the U.S.S.R. industrialized, mechanized and independent of virtually all foreign products by 1933.

Considerable progress in both these directions was accomplished during the five year interval, particularly with respect to the upbuilding of the heavy industries and the production of oil, but the goal was not completely reached. Accordingly a second Five Year Plan for all branches of the national economy, including not only agriculture and industry but transportation, finance and education, was inaugurated in 1933.<sup>1</sup> During the past ten years the reorganization of individual farms into state farms and collective farms has been relentlessly pushed forward. Today it is claimed that over eighty five per cent of all the former individual holdings have been collectivized.

This work is being done under a Charter for Agriculture, which was issued in 1930 and revised in 1935. It provides for a plan of collectivization which is voluntary in form but reinforced by a good deal of official compulsion. In each agricultural community the peasant farmers are encouraged to form an *Artel* or cooperative agricultural association. To this association the peasant turns over his farm land, farm buildings, agricultural machinery, draft animals, his stock of seed and his labor. All these become socialized into a collective farm project. On the other hand he keeps his house and garden, all ani-

<sup>1</sup> Detailed account is given in W. P. Coates and Z. K. Coates, *The Second Five Year Plan* (London 1934).

imals not used for work, poultry and minor implements. These remain his personal property.

Anyone who has attained the age of eighteen is eligible for membership in an Artel provided he does not belong to one of the disfranchised classes. Each member on being admitted pays an entrance fee which is returned to him if he ever leaves the association but his land when once socialized into an Artel can never again be taken back into individual ownership.

MEMBER  
SLEEP IN THE  
ARTELS

The Artel is governed by a 'town meeting' of its members and its affairs are administered by a council which is elected each year at one of these meetings. The council decides what shall be produced from the land and apportions the work. The products are delivered to certain state marketing organizations established for this purpose and at the end of the year each member of the Artel gets his share of the proceeds. To keep him going in the meantime he may draw from the Artel (in goods or money) not exceeding fifty per cent of his estimated earnings. All the Artels are federated into a general union which keeps them supplied with machinery, implements, goods and money. These advances are paid for when the annual accounting is made. The council of the Artel also regulates the distribution of wages and has charge of certain common funds including those which have been set aside for the support of the aged members or for members who have become otherwise incapacitated.

HOW A  
ARTEL IS  
GOVERNED

While the system is voluntary in form the Soviet authorities have actively encouraged it in ways which leave the peasants very little choice. For example the tax system greatly favors the property of those who are members of an Artel whether this property is in the socialized category or retained by the peasant himself. Peasants who have not come into the collectivized system are loaded with a discriminatory tax burden and in the case of the more well-to-do farmers (*kulaks*) this burden is so heavy that even without forcible dispossession they would have been virtually eliminated altogether. Quotas of production for each collectivized farm have been set up moreover and anything above this quota becomes the property of the Artel members to be sold on the open market for whatever it may bring rather than turned over to a government agency at fixed prices.

VOLUNTARY  
IN FORM,  
BUT COM-  
PULSORY  
IN FACT

Under the system of collective farming the total grain production in Russia has been greatly increased during the past nine years. In

1928 the total grain production was about 70 000 000 metric tons. In 1930 it had passed 80 000 000. By 1934 it had risen to almost 90 000 000. Governmental encouragement has been principally given to grain production because surplus grain can be readily exported and it is from such exports that the Russian government has hoped to get funds for the purchase of essential imports. The falling price of grain in the world market during the years 1929-1933 frustrated this expectation to a considerable extent for the increase in grain exports did not produce a corresponding rise in payments from abroad.

Foreign trade in Russia is a state monopoly. All imports and exports are controlled by the Commissariat of Foreign Trade. No goods can be brought into Russia or shipped out except with the approval of this commissariat. This includes all goods used in state enterprises or by the state controlled organizations such as cooperatives and collective farms. The purpose of this arrangement is not only to ensure a favorable trade balance but to safeguard Soviet state industries against the competition of goods from the capitalist countries.

During the past ten years Russia has been in the throes of an industrial revolution comparable to that which transformed Great Britain a hundred and fifty years ago. It is officially claimed that the industrial production of the Soviet Union is seven times what it was before the war and that the number of workers employed in factories has more than tripled. The Communist authorities have done their utmost to stimulate industry but in so doing they have inevitably promoted a large migration from the rural districts into the towns and cities. Before the war only twenty per cent of the people lived in urban communities; today the proportion has been almost doubled.

Most industrial enterprises in the Soviet Union are on a large scale employing thousands of workers. They continue to be owned by the state and are operated by public trusts under the supervision of the various commissariats. During the early stages of the first Five Year Plan considerable numbers of technical experts were enlisted (in some cases from abroad) to help with the rapid upbuilding of the industries. But they were not given freedom from interference at the hands of party com-

missars and when their work failed to meet expectations these experts were sometimes branded as enemies of the state. In 1931 however the government changed its policy in this respect and in recent years has given the managerial workers more freedom as well as larger privileges. They are no longer ruthlessly prosecuted for technical errors. The Soviet authorities have learned that the effective management of a great industry demands something more than simple loyalty to the Communist faith. They have also learned apparently that the complete elimination of individually owned property is impracticable.

All industrial labor is employed by the state either directly or through the operating trusts. There is no bargaining between the worker and these publicly controlled industries. Rates of remuneration and conditions of work are fixed by the authorities. And they are not fixed on a uniform basis. The old Marxist principle of having every worker rewarded according to his needs has been replaced by a system of rewarding him according to his work, which is quite a different thing. In fact the distinction between socialist production on a *work* according to-work basis and capitalist production as commonly understood is not a very fundamental one so far as the worker's remuneration is concerned. The main difference is in the ownership of the shop or factory where the worker is employed not in the share of the product that he receives. In Russia however work is not optional. Labor offices are maintained by the government and workers are registered at the office nearest their homes. Whenever labor is needed these lists are called upon. Those who are assigned to any job must take it at the wage rate prescribed. There are organizations known as trade unions but they are not organized by trades. Only one union is recognized in any factory all workers must belong to it and cannot join any other.

Every factory or shop in Russia has a committee of union workers and this committee sends one or more delegates to the district regional and All Union congresses of trade unions. No strikes or lockouts are permitted. Disputes are settled in accordance with a prescribed adjustment procedure. There is virtually no unemployment in Russia because the development of industry under government stimulus has absorbed the available labor supply. On the other hand there cannot be a serious shortage of workers in any branch of industry because no

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unemployed person may refuse except on grounds of physical disability any job offered to him through a labor office. If he is sent to a pick and shovel job he must take it no matter what his training may have been. Foreign observers have also voiced the suspicion that the unemployment problem has been partly solved by encouraging the use of labor instead of machinery and by placing two or three workers on a job which would be handled by a single worker in other countries. There has been however a good deal of political unemployment in Russia that is the lack of employment for all who were in any way connected with the old regime or who have otherwise incurred the displeasure of the Communist authorities. Under the new constitution the legal discriminations against these people have been removed.

An immense amount of governmental administrative work has been necessitated by this state control of industry and labor. For a time it seemed as though the whole system might break down through the complexity and frequent inefficiency of the controlling bureaucratic authorities. To guard against this however there was first established a Commissariat of Workers and Peasants Inspection which was superseded by the Soviet Control Committee in 1934. This committee is appointed by the Communist party congress on recommendation of its organization bureau. Its duty is to examine and simplify the administrative mechanism wherever it can, also to arrange for proper coordination among the various authorities and to iron out the rough spots in the whole system. The committee likewise has the function of recommending the demotion, dismissal or prosecution of officials who seem to be lax or inefficient.

#### SOVIET PUBLIC FINANCE

The key position in the financial system of Russia is occupied by the state bank (Gosbank) which controls the issue of paper money and is the sole purveyor of short term credits. It operates through a head office in Moscow and regional offices in all the more important Russian cities. Every enterprise and institution must keep an account with this bank and clear their transactions with one another through it. Thus the Gosbank has become a huge accounting concern which adjusts the debits and credits for the vast range of state controlled enterprises. Soviet paper money is inconvertible but in

CHECKS  
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COMMUNIST  
FINANCE

THE  
GOS BANK

this respect it is by no means unique among national currencies

There is also a state savings bank which functions like savings banks in capitalist countries except that all its funds are automatically invested in government bonds. No money is loaned by this bank to any private concern or individual. Under the new constitution the people are encouraged to save part of their incomes and deposit the money in this institution. There are likewise some special banks which provide long term loans for house building for local public works and for the various cooperatives. But since the government furnishes the funds and controls the enterprises it is obvious that the work of these banks can be concerned with little more than the mechanics of accounting.

OTHER  
S.A.S.

The budget means more in Russia than in other countries. It includes far more than the ordinary public revenues and expenditures. At least three quarters of the country's total capital expenditures are financed out of the budget, principally through the agency of the banks above mentioned. The whole income and outgo of state-conducted industries are in many cases passed through the national budget—all of which gives the figures a sort of astronomical magnitude. Most of the government's revenue is derived from two sources: from the profits from state enterprises and from taxation. The former include gains from the operation of the railroads, the post office, telegraph and telephone lines, banks and other credit institutions, and the vast array of state-operated industries. Taxation includes all sorts of levies. There are customs duties, taxes on business and on agriculture, income taxes, excess profits taxes, and special taxes for various designated purposes. Government ownership has sometimes been advocated as one means of reducing taxes. It has not done so in Russia. Funds for capital expenditures are obtained by the Soviet government by borrowing from the state savings bank and from all other credit institutions which have funds to spare.<sup>1</sup>

THE  
BUDG  
SYSTEM.

#### THE SUPPRESSION OF CIVIC RIGHTS

Terrorism by secret police, arrests without warrant, imprisonment without trial, and a general violation of civic rights—such things were by no means uncommon in Czarist Russia. Liberals and evo-

<sup>1</sup> For a full discussion see W. B. Reddway *The Russian Financial System* (London 1935) and L. E. Hubbard *Soviet Money and Finance* (London 1936).

lutionaries declared that they would put an end to all such abominations when they came into power but when the Bolsheviks obtained control of the government in 1918 one of their first acts was to provide a system of secret police under a new name. The commission in charge of repressive police activities became known as the Cheka. Under its uncontrolled and ruthless power no man's life or liberties were safe. Arbitrary imprisonment and execution with an utter disregard for the necessity of substantial evidence became the order of the day. In 1922 the Cheka was abolished but a new organization known as the OGPU immediately took its place. This in turn was abolished a few years ago (1934) and its functions handed over to the regular Union commissariat of internal affairs. It is the duty of this commissariat to safeguard the results of the revolution by suppressing counter revolutionary activities which is another way of saying that it puts its iron heel on anything which the government does not approve. The constitution of 1936 provides that the inviolability of the person is guaranteed and that no one may be subject to arrest except on order of the court or with the sanction of a state attorney. But these guarantees have not yet availed to prevent arbitrary arrests, secret trials and hushed up executions.

During the years immediately following the Russian Revolution the refusal to permit any degree of personal liberty was commonly defended as a necessary but temporary measure to safeguard the new regime from counter revolutionaries. When the Soviet system became firmly established it was said the toleration of free speech and a free press would be practicable. So far as criticism of the government or of the Communist party is concerned there has yet been no relaxation of the stringent rules despite the bill of rights which is contained in the new constitution. But as respects the shortcomings of the economic system there has been a good deal of concession to the principle of free speech. Under the formula of constructive self criticism the new papers and the workers have been permitted and even encouraged to lay bare any abuses which they find. Some years ago when the American anarchist, Emma Goldman visited Russia she complained to the Communist leaders about the absence of freedom which she found in the country. Freedom of speech and freedom of the press—these are capitalist institutions which have no place in a proletarian dictatorship they replied. But they are embodied

THE  
CHEKA  
AND THE  
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plainly and without qualification in the new All Union constitution

Rigid control of the press and the radio continues in the U S S R despite these constitutional guarantees and no public meetings can be held without official authorization Wonder is sometimes expressed that the Russian people tolerate this stifling of personal liberty but it should be remembered that it is no new thing among them Prior to the Revolution there was very little personal liberty in Russia so far as the masses of the people were concerned Workers and peasants do not miss something that they never had With respect to freedom of religious worship however the situation is different and the people have resented as far as they have dared the government's hostility to the churches The new constitution now guarantees freedom of religious worship and also freedom of anti religious propaganda but it says nothing about pro-religious activities

Russian commentators on the new constitution have taken care to point out that the various rights and liberties guaranteed by this document are to be enjoyed only by loyal supporters of the Communist régime and do not extend to monarchists reactionaries or counter revolutionists The new constitution in Stalin's words is a socialist constitution based on principles of extensive socialist democracy It is not the intention to permit by the granting of individual liberties any change in the actualities of proletarian dictatorship or in the supremacy of the Communist party There can be no rights or liberties for those whose aim is the weakening of the socialist order There is no room for a loyal opposition in the Soviet Union even under the new organic law

WHAT THE  
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MEAN

#### SOVIET FOREIGN POLICY

In the years immediately following the Revolution it was the policy of the Soviet government to do what it could in the way of promoting trouble with the capitalistic states During this interval of course the Bolsheviks had provocation in that their country was subjected to a virtual economic boycott by its neighbors In the course of time however this line of action was tacitly abandoned and the government began to seek both recognition and trade agreements with other countries In this quest the Soviet authorities were only moderately successful because they were

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not deemed to be acting in good faith. After 1931 however the Communist leaders became alarmed by the growth of Hitlerism in Germany with its virulent attacks upon communism everywhere and its predictions of an inevitable Russo-German war. The U S S R therefore turned with a friendly gesture to France and concluded a treaty of non aggression with the French Republic in 1932. Later in 1935 the two countries signed a more comprehensive pact of mutual assistance supplemented by negotiations for military cooperation which are still going on. These may materialize into something similar to the cordiality which existed between the two countries prior to the World War. Meanwhile the Soviet authorities have strained their relations with Italy and Germany by actively supporting the loyalists against the insurgents in the Spanish civil war.

The Soviet attitude towards the League of Nations has also undergone a marked change during the past half dozen years. At the outset the Soviet authorities declined to have anything to do with the League regarding it as a capitalist super state. Gradually however they began to take an informal part in League conferences and eventually became full fledged participants. The Soviet Union entered the League of Nations in September 1934 and since that time has loyally supported it. Soviet influence in the League has been directed towards the maintenance of the territorial *status quo* the placing of emphasis upon the unity of European peace and the encouragement of regional pacts for mutual assistance.

In the Far East there has been for many years a serious conflict of interests between the U S S R and Japan. Relations between the two countries have become strained from time to time but various concessions usually on the part of the Soviet Union have prevented an open rupture. Japanese penetration of Manchuria has seemed to involve a potential menace to the Russian province of Eastern Siberia in that it brings the Mikado's forces within striking distance of the Trans Siberian railway. On the other hand the Japanese look upon the Russian terminal base at Vladivostok as an even greater potential menace to Japan. For this Russian air base is only about six hours flying distance from Japan's great industrial cities which are for the most part of tinderbox construction. They could be set on fire and ruined in a very short time by any hostile power having control of the air and Vladivostok is the only place on which such control is likely to be

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AND JAPAN

based. In their dealings with Japan the Soviet authorities have displayed a spirit of great conciliation. means here by the construction of military motor roads in Eastern Siberia, by the double tracking of the Trans Siberian railroad, by the building of munition factories there, and by the development of great air bases they are preparing to defend their territorial integrity against Japanese aggression if need be.

In the discussion of Russian affairs one frequently hears reference to the Third International. What is this organization? It is a world association of Communists. Its beginnings go back to Karl Marx, who founded in 1864 an international association of socialist workmen which became known as the First International. His idea was to promote the socialist cause by bringing to ether in one great federation the socialist comrades of all nationalities. But this organization encountered internal dissension partly because it supported the abortive Communist risings in Paris during the Franco-Prussian war and it was formally dissolved in 1876. Thirteen years later a Second International was formed and it was still in existence when the World War began. During the war it broke up, but in 1919 it was reconstructed by the more conservative labor and socialist groups. The radical groups, however, would not come back into the organization. Instead they convened at Moscow and created the Third International under the aegis of the Russian Communist party. It now represents or claims to represent, the Communist parties and organizations throughout the world.

The Third International (Commintern) held its seventh and most recent meeting in Moscow during 1935. Stalin was one of the delegates of the Communist party at this gathering. The Russian delegation constituted a minority but exercised a dominating influence over its deliberations. Between the Commintern and the Soviet government there is claimed to be no official connection. Various high officers of the Russian government serve as delegates, to be sure, but they do so as representatives of the Communist party, not as Soviet officials. The Russian government has consistently disclaimed responsibility for any phase of the Commintern's program and especially for its propagandist activities in other countries, including the United States. In a purely technical sense this disclaimer may be justified, for it is the Communist party in Russia (not the Soviet government) which sub-

THE  
THIRD  
INTERNATIONAL

ITS STATUS  
AND ACTIVITIES

sides and supports the propagandist work of the Third International. But the two are so closely identified that no real distinction can be made between them.

A prodigious amount has been written about the Soviet Union and its affairs during the past twenty years. The Moscow government has published no end of statistics and other data while foreign observers have given us books by the dozen. Yet Russia remains a great enigma among the nations. The state industries are reported in one official announcement to have exceeded their quotas of production; a few days later we learn that hundreds of factory managers have been ousted and penalized for failing to achieve these quotas. The Red army is officially praised as a thoroughly unified force absolutely loyal to the Communist cause; then comes an announcement that various high officers in its supreme command have been executed for disloyalty. A constitution is promulgated with a forthright stipulation that the trial of all offenses shall be public; yet the official organs of the government continue to tell the world about groups of workers who have been liquidated for sabotage without any semblance of a public trial. And in a social order which is declared to be free from all class antagonism one reads official reports of pacemakers in the speed up factories being murdered or beaten by resentful fellow workers.

As a matter of fact it is well nigh impossible for anyone to present a trustworthy picture of the political structure, the economic situation, the public policies, and the national morale of the U. S. S. R. at any given time. This is because the territory is so vast that what is true in one portion of it may be wholly untrue in others. It is also because things are continually in transition, in a state of flux, moving from one policy or objective to another. One must also remember that the general line to which the Communist party leaders profess strict adherence is a very sinuous one, with endless twists and turns. In fact it is little more than whatever these leaders desire it to be. No free, uncensored descriptions of Russian affairs by those who know the inside story ever see the light of day. No foreign visitor personally conducted around the country, under official supervision, is in a position to ascertain the truth. Hence the most conflicting accounts of conditions in this vast land are spread before the rest of the world. Obviously they cannot all be true, and one is sometimes tempted to doubt whether any of them are.

Writers have been fond of comparing the Russian Revolution of the twentieth century with the French Revolution of the eighteenth. There are some striking similarities—and also some notable contrasts. Both were uprisings against a despotism which had become honeycombed with inefficiency and corruption. Both began in the capital city by storming the prison, ousting the government and placing the monarch under surveillance. In both revolutions he was later put to death. In both countries the revolution became more radical as it ran its earlier course and then reacted in its later stages. As in France the power passed from Mirabeau to Danton, from Danton to Robespierre and back to the more conservative hands of Bonaparte, so in Russia it went from Kerensky to Lenin and Trotsky, then to Stalin, the chief author of the new Soviet constitution. Both revolutions inaugurated a Red Terror for the upper classes, abolished the state church, harried the nobility out of the country, gave the land to the peasants and issued floods of paper currency until the country fairly wallowed in it.

THE  
RE-  
GHI-  
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COMPARED

1 THE  
SIMILARITIES

But the French Revolution came when France was at peace and had been for six years. In Russia the revolution occurred in the middle of a world war, with the country badly exhausted.

The revolution took France into a war; it took Russia out of one. Economic conditions, moreover, were widely different in the two great upheavals. France in 1789 had only one large city. Outside Paris there was no industrial population in the modern sense. The only proletariat in France at that time (other than in Paris) was the peasantry. But Russia in 1917 had many industrial cities which had become dependent upon the rural districts for food and for the raw materials of industry. France in 1789 had no system of railroad transportation; one section of the country was not dependent on the rest. In Russia, on the other hand, the economic system had become (to a degree at least) based upon the facilities for transport, and these broke down.

2 THE  
CONTRASTS

Finally, and most important, the leaders of the French Revolution had no clear ideas as to what they wanted in the way of economic reconstruction. They had no Marxist philosophy to serve as their guide. Hence they did not try to change the existing economic system from top to bottom by huffing it to a strictly communist basis. The French Revolution was chiefly directed against the privileged orders

—the nobility the ecclesiastical hierarchy the rich and powerful The Russian Revolution did not rest content with striking at these groups but went after the bourgeoisie as well That is why writers speak of the French Revolution as a great political movement but designate the Russian Revolution as a social and economic overturn

It is as yet too early to determine whether the world will find much similarity between these two great upheavals in their later stages

THE FUTURE The French Revolution like the Russian gained many sympathizers in other countries And it held their admiration so long as revolutionary zeal was directed against the abuses of the old regime But when Danton went to the guillotine and when Robespierre followed him —when the revolutionaries began cutting one another's heads off —then the ranks of foreign admirers began to dwindle In France the great upheaval of 1789 ultimately threw the destinies of the people into the hands of a Bonaparte who reversed the engines and sent the ship of state full speed astern He restored the church reestablished the nobility and set up in France a government more highly centralized than that of the Bourbons had ever been From the outbreak of the French Revolution to the height of the reaction an interval of at least twenty years elapsed

It remains to be seen whether Russia as time goes on will pass through a similar experience Is the constitution of 1936 to be even measurably administered in accordance with the spirit which its provisions imply? Or is it as the skeptics declare merely a bit of decorative window dressing designed to facilitate the work of Soviet propagandists abroad? Can the distinction between personal property and private property be maintained or will the one gradually expand into the other? What would be the effect of a war especially if Russia (compelled to fight on three fronts west south and east) should prove to be the loser? Can the masses of the people to whom civil rights have been granted on paper be indefinitely restrained from transforming these rights into realities? It is easier to ask such questions than to answer them

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RUSSIAN COMMUNISM In addition to the books listed at the close of the preceding chapter special mention should be made of Sidney and Beatrice Webb's *Soviet Communism: A New Civilization?* (2 vols. New York, 1936) a comprehensive survey with pro-Communist leanings Other well known sources of information are H. Popov *Outline History of the Communist Party of*

the *S t U* (New York 1934) the articles on Communism and on Communist Parties in the *Encyclopedia of the Social Sciences* Vol IV pp 81-95 P Male sky Male tch edito *The S t Union Today* (New York 1936) P Sloan *S t Democracy* (London 1937) A R Williams *The Soviets* (New York 1937) T B Brameld *A Philosophic Approach to Communism* (Chicago 1933) H J Laska *Communism* (New York 1927) W H Chamberlin *Russians in Age* (Boston 1934) and W Gurian *Bolshevism Theory and Practice* (London 1934)

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BIOGRAPHICAL G V Vintitsky *Life of Lenin* (New York 1933) L on Totsky *My Life* (New York 1930) and I D Lenin *Stalin* (New York 1931)

The *Handbook of the Soviet Union* published under the auspice of the American Russian Chamber of Commerce (New York 1936) contains much valuable data

## CHAPTER XLII

### THE LESSER GOVERNMENTS

Whatever crushes individuality is despotism by whatever name it may be called — *John Stuart Mill*

The major governments of Europe are not in all cases the most successful ones. They are not necessarily the ones which have the greatest assurance of being permanent. Two factors combine to determine in very large measure not only the character of a government but the extent to which it will prove workable and enduring. One of these factors is geography the other is race. A nation's security against attack with the consequent overthrow of its government has always been to some extent a matter of geography. England and Switzerland one with her fringe of ocean and the other with her cordon of mountains afford obvious examples. Natural resources have an influence in determining whether a country can become relatively self sufficient and free from dependence upon its neighbors. Political absorption has sometimes been the outcome of economic necessities. And as for the relation between racial traits and the achievements of government it is beyond question that some races of men have a greater genius for politics than others. The history of nations is full of evidence to support that proposition although there is no race which does not look upon itself as politically gifted.

The difficulty of maintaining a combination of orderly and progressive government in any country is determined not only by considerations of geography and race but by its own historical traditions. Governments everywhere are to a large extent in bondage to the past. When certain political ideals become stamped upon the public imagination it becomes essential that both the structure and the methods of government shall be adapted to fit these stereotypes which are usually embalmed in national slogans. Other things being equal a small country is less difficult to govern than a large and populous one. Hence the study of comparative government can profit by including



within its scope a brief review of the way in which some of the less important countries of Europe are endeavoring to provide themselves with rulership

In selecting a few lesser countries for this purpose one naturally thinks of Switzerland one of the oldest smallest and best of the world's democracies With its plural executive its unique interpretation of the principle of ministerial responsibility and its free use of direct legislation the Helvetic Republic has illuminated both the science and the art of government The Scandinavian kingdoms are also worth a glance from the student of comparative government because they show the system of limited monarchy functioning at its best Poland likewise deserves some attention particularly because of the quite unusual procedure which the new constitution of that country provides for the nomination and election of the chief executive And Czechoslovakia is distinctive for the stability with which it has conducted its affairs during a period when neighboring governments have been toppling over Likewise its constitutional court is a unique feature Finally Yugoslavia deserves inclusion because of its reversion to the old system of open voting and other unusual features in its electoral system

SOME  
STRIKING  
FEATURES  
OF THE  
LESSER  
GOVERN-  
MENTS

# 1 SWITZERLAND

Switzerland is in many ways the most interesting of these lesser political entities Among the modern democracies which are true democracies Lord Bryce once said the Helvetic Republic has the highest claim to be studied It contains a greater variety of institutions based on democratic principles than any other country The most interesting lesson Switzerland teaches is how traditions and institutions taken together may develop in the average man to an extent never reached before the qualities which make a good citizen—shrewdness moderation common sense and a sense of duty to the community It is because this has come to pass in Switzerland that democracy is there more truly democratic than in any other country in the world <sup>1</sup>

A TRUE  
DEMOCRACY

Switzerland has about one third the area of New York state and about one third the population She is thus one of the smallest

among European nations wedged in between three of the largest and most powerful—France Germany and Italy Her people live

THE LAND OF THE SWISS on both sides of a great mountain chain having spread themselves over the plateaus above and through the valleys below Three races speaking three languages have been so squeezed together by powerful neighbors that they have grown into one The Swiss people have no national language Most of them speak German but in some parts of the country French and Italian are the languages of the majority Nor is there any uniformity of religious belief Protestants dominate a majority of the cantons while the Catholics outnumber them in the rest On the face of things therefore the Helvetic Republic lacks most of the cohesive forces which are commonly said to make for national solidarity—those which arise from community of race language and religion Nevertheless and in spite of all this these four million Swiss form a thoroughly coherent nation They have behind them a tradition of self government extending back six hundred years or more

The Helvetic Republic is a confederation of twenty five cantons<sup>1</sup> There is a federal constitution adopted in 1848 and considerably re-

THE SWISS FEDERAL CONSTITUTION revised in 1874 which cannot be amended except by majority vote of the people and a majority of the cantons<sup>2</sup> Like the Constitution of the United States this constitution is a grant of powers and the allocation of governmental powers between the federal and cantonal governments is roughly similar to that in the United States The federal government has control of

ITS DIVISION OF POWERS foreign relations but the constitution provides that the cantons (with the federal government's approval) may make certain agreements with foreign countries The federal government has an exclusive right to send and receive diplomatic agents to declare war and make peace and to conclude treaties of an important nature The Swiss military system based upon universal training is under its control The federal government has control of the postal system it operates the Swiss railroads (with a few minor exceptions) as well as the tele-

More accurately there are nineteen cantons and six half cantons The latter have cantonal governments of their own but they have only one representative in the federal council whereas the others have two representatives

An English translation is printed in W. E. R. Pppard and others *Source Book on European Government* (New York 1937) Part I pp 19-54

graph and telephone services. It has charge of the currency and has the exclusive right to issue paper money. It has control of banking and has power to regulate commerce including the power to levy customs duties but it has no right to lay direct taxes upon the people. If it needs more revenue than it can obtain from indirect sources the federal government may levy upon the cantons in proportion to their wealth and taxable resources. It controls all available water powers and has a monopoly in two fields of production namely explosives and alcohol. These are its exclusive powers.

In addition the Swiss federal government has various concurrent powers that is powers which it exercises in common with the cantons. Among these are powers relating to the regulation of industry and insurance, the construction and upkeep of highways, the control of the press, and the encouragement of education. When the federal government exercises a concurrent power its laws prevail over those of a canton.

The Swiss federal government consists of a legislature, an executive and a judiciary. The federal legislature is divided into two chambers known as the council of states and the national council. The council of states seems at first glance to be an almost exact replica of the American Senate for it contains two members from each regular canton and one from each half canton—forty four members in all. But the resemblance is only superficial. In the United States the senators are elected by the people of the forty eight states for six year terms.

THE SWISS  
FEDERAL  
PARLIAMENT

1. THE  
UPPER  
CHAMBER  
OR COUNCIL  
OF STATES

in Switzerland the members of the upper chamber are chosen in such manner and for such terms as each canton may decide. In some they are elected by the people of the canton in others by the cantonal legislature. The terms vary from one to four years. The two upper chambers Swiss and American are also quite unlike in their respective powers. The Senate of the United States has some highly important special prerogatives—the confirmation of appointments, the ratification of treaties, and the hearing of impeachments. The Swiss council of states has no special powers of any sort. Ostensibly it has exactly the same legislative authority as the lower chamber but in actual practice its share in law making is considerably less important.

The lower chamber or national council is composed of about two

hundred members elected from the various cantons under a system of proportional representation <sup>1</sup> An election takes place every fourth year. Nominations are made by the various political parties each of which presents a full or partial list of candidates in every canton. Or as very often happens a mixed (*panaché*) list is made up containing candidates from more than one party. Manhood suffrage is the rule. Every male Swiss citizen who has completed his twentieth year is entitled to vote and any voter who is not a clergyman can be a candidate <sup>2</sup> Woman suffrage has not been granted in Switzerland and has never been a national issue there.

The Swiss national council holds two regular sessions a year and occasionally meets for a third time in special session. The sessions are short, rarely exceeding four weeks. The council chooses its own presiding officer and he has the usual powers. Members may speak in German, French or Italian—and they do. You will hear them all in a single debate. This gives rise to no serious practical difficulties because every educated Swiss knows at least two languages and often three or four. German, French and Italian are recognized as official languages hence most public documents are printed in all three versions which is a source of considerable expense.

The process of lawmaking in Switzerland deserves a word for it presents some significant features. Every bill is introduced simultaneously in both chambers. This differs, of course, from the practice in other countries, but it has the merit of ensuring that a bill will have independent consideration by two groups of legislators. In the United States if a bill originates in the House of Representatives and is killed in committee it never gets before the Senate at all. Or if introduced in the Senate and rejected there it does not reach the House calendar. In Switzerland a bill may be under discussion in both chambers on the same day.

Any member of either Swiss chamber may introduce a bill but most of the important measures are brought in by the ministry (fed

<sup>1</sup> There are a few cantons which have only a representative and in these of course there is no proportional representation.

A Protestant clergyman may become eligible however by resigning from the ministry.

eral council) They have been carefully framed before the opening of the session Either chamber moreover may by resolution request the ministers to prepare a bill on any specified subject and this is not infrequently done Bills of the type known as private bills and private members bills in England or as local bills in the United States are relatively few This is largely because the Swiss have made ample provision for taking care of this ancillary legislation by means of executive decrees (*Verordnungen*)

2 DOMINATING INFLUENCE OF THE FEDERAL COUNCIL

The two Swiss chambers do a good deal of their work through committees on each of which all the political parties are represented All questions on the agenda are first referred to them When a committee reaches a decision it appoints a reporter (as in France) to make the report If the committee is badly split and a minority report seems to be in order an additional reporter is named to present that side of the case As a matter of fact however bills presented by the federal council are not often rejected or seriously modified by a legislative committee The executive branch of the government in Switzerland guides the legislative branch as effectively as in Great Britain perhaps even more so

3 COMMITTEE WORK

If either of the legislative chambers rejects a measure or passes it with amendments a conference is held between representatives of the two bodies and an agreement is usually obtained in this way Although the powers of the two houses are ostensibly equal the upper chamber does not often stand out against the will of the lower house At times the council of states has insisted on defeating measures which the national council has favored but such action is becoming less common The Swiss council of states does not possess the power or prestige in lawmaking that the American Senate commands On the other hand it is more influential than the Senate of the French Republic Unlike most upper chambers moreover it has not acquired a reputation for conservatism No one ever speaks of the Swiss council of states as a citadel of reaction or a brake upon the wheels of progress

4 LEGISLATIVE DISAGREEMENT

The executive in Swiss government is unique Virtually all other countries have single executives—a king emperor president Fuehrer or head of the government as the case may be Switzerland has a plural executive which consists of a federal council or ministry of seven members elected

THE SWISS COLLEGIAL EXECUTIVE

by the two legislative chambers in joint session <sup>1</sup> The choice is made immediately after each general election They hold office for four years unless the lower chamber is dissolved in the meantime In that case a new election is held when the legislature reconvenes The constitution does not require that members of the two chambers shall choose the federal ministers from their own ranks but in practice this is usually done On being chosen the federal councillors vacate their seats in the legislative chambers and special elections are then held to fill the vacancies Reelections to the federal council are common and when a councillor is once elected he ordinarily remains in office as long as he desires <sup>2</sup> This permanence of tenure distinguishes the Swiss federal council from all other European ministries

Every year the two legislative chambers in joint session elect one member of the federal council to be chairman of that body with the title President of the Swiss Confederation But apart from presiding at meetings of the federal council and giving the casting vote in case of a tie he has no constitutional powers of any importance He does not appoint officials or veto bills or carry on diplomatic negotiations He is merely the titular head of the confederation and represents it on occasions of ceremony But by custom he has become a sort of general overseer responsible for inspecting the work of the various administrative departments and the federal council may authorize him to act in its name This is sometimes done in emergencies but no act that the President performs in this capacity is valid until approved by the council He is in no sense a prime minister therefore he does not select his colleagues and has no authority over them His legal powers are virtually the same as those of the other councillors although he sits at the head of the table

The two chambers also elect one of the federal councillors to be Vice President of the Confederation He presides when the President is absent and as a rule he is promoted to the presidency in the following year The constitution does not permit a retiring President to succeed himself or to be elected Vice President neither does it permit a Vice President to be reelected Thus it virtually compels rotation On the other hand it

<sup>1</sup> Not more than one member can be chosen from a single canton By usage three of the largest cantons Bern Zurich and Vaud are always represented in the federal council

During the period 1848-1937 there have been only fifty-six federal councillors.

THE  
PRESIDENT  
OF THE  
CONFEDERATION

THE VICE  
PRESIDENT

does not preclude a second term if at least one year intervenes. Hence a minister who remains long enough as a member of the federal council is likely to have a second or even a third presidential term.

What are the functions of the federal council as chief executive of the Swiss Republic? They are not wholly executive in their nature but legislative and judicial as well. The Swiss government is not constructed like the American on the principle of separation of powers. The federal council is a ministry in that it serves as the executive committee of the Swiss parliament. It is controlled by the latter and must obey all resolutions passed by the two chambers. If the councillors find themselves outvoted on any matter they do not resign as in France or England; they merely pocket their pride and obey the will of the legislative bodies with as good grace as they can muster. The Swiss see no reason why ministers whose general work is satisfactory should be turned out of office because they and the chambers are of a different opinion on some single proposition.

THE  
FEDERAL  
COUNCIL AS  
A MINISTRY

THE SWISS  
THEORY OF  
RESPONSIBILITY

As the supreme executive authority of the confederation the Swiss federal council conducts foreign affairs, promulgates the laws, controls the army, and appoints all federal officers other than those who are chosen by the two chambers in joint session. It prepares each year the federal budget of estimated receipts and proposed expenditures. This budget is then laid before the chambers by the federal councillor or minister who is in charge of the department of finance. It is explained and defended on the floor by him. After the budget has been voted by the two chambers, the federal council assumes the duty of collecting the revenues and supervising the expenditures. The council also presents an annual report giving an account of its work in both foreign and domestic affairs, and this report is carefully gone over by the legislative chambers.

FUNCTIONS  
OF THE  
FEDERAL  
COUNCIL

1. EXECUTIVE

The members of the federal council also have important legislative functions. They prepare bills for consideration by the two chambers, sometimes in compliance with specific requests made by the latter. These requests are made by resolutions known as postulates. All measures are prepared by experts in bill drafting who are regularly employed for this purpose. On the other hand, when bills are introduced by private members of

2. LEGISLATIVE

either chamber they are referred to the appropriate member of the federal council for his opinion before being acted upon. Thus no measure is ever enacted by the Swiss parliament without its being first considered by someone in the executive branch of the government.

This does not mean of course that the members of the federal council have a veto upon legislation. They sometimes present at the request of the chambers bills that do not meet their own approval and bills of this type have occasionally been passed. The federal council or council of ministers in a word is expected to participate actively in the lawmaking process but not to feel hurt if its advice is disregarded. As someone has said the Swiss federal councillor is like a lawyer or an architect in that his advice is sought and usually heeded but he is not supposed to throw up his job when his employer insists on having something done differently. Although they cannot be members of either chamber the federal councillors have a right to appear on the floor at any time and take part in the debate. They use this privilege freely and to good purpose.

Finally the Swiss federal council has some powers of a judicial nature. Originally it decided controversies on points of constitutional law and also served as the chief administrative court of the confederation but many years ago the federal courts took over its jurisdiction in constitutional cases. It still retains some jurisdiction in cases arising under administrative law although it has now surrendered most of this authority. A constitutional amendment in 1914 authorized the creation of a federal court of administrative justice. After a long delay however it was decided not to establish such a court but to give its proposed functions to the *Bundesgericht* or regular supreme court. The latter body accordingly now deals with complaints made by individuals against the actions of the public authorities.

Like the ministries of other countries the Swiss federal council has both collective and individual functions. It holds regular meetings its sessions are secret and decisions are reached by majority vote. The President has a vote on all questions and when the council is deadlocked he has an additional

THE COUNCIL  
AS A  
CABINET

By a constitutional amendment (adopted in 1931) a permanent secretariat was established to serve the federal council. It is headed by a chancellor who is chosen by the two legislative chambers in joint session. His functions also as head of the civil service.



tional vote. But the Swiss federal council is not really a cabinet in the common acceptation of the term. The term cabinet implies a degree of party solidarity which the Swiss council does not possess. Its members are not drawn from a single political party and are not necessarily united on any political program. They are not chosen to carry out party pledges or to serve the interest of a party as is the case with members of the cabinet in Great Britain and in the United States.

In addition to its collective functions the federal council has work which its members perform individually. Each of the seven councilors including the President and the Vice President is the head of an administrative department. These seven departments represent the usual division of administrative work as one would expect to find it in a small country. Their designations are (1) political (including foreign affairs) (2) finance and customs (3) justice and police (4) interior (5) military affairs (6) posts and railways and (7) public economy (i.e. agriculture industry commerce and labor). The political department includes not only foreign affairs but naturalization federal election laws emigration and some other matters. Each department is divided into bureaus or services. In these the work is done by members of the Swiss civil service which is not organized under a general law defining its status and privileges.<sup>1</sup>

INDIVIDUAL  
WORK OF  
THE COUN-  
CILLORS

Turning to the judicial system of Switzerland not much need be said. There is only one federal court—the *Bundesgericht* it is called. It consists of twenty-four judges (and nine substitute judges) elected for a six-year term by the two legislative chambers in joint session. But the practice is to re-elect these judges on the expiry of their terms so that they virtually hold office as long as they desire it. The court sits in three sections. It has original jurisdiction in controversies arising between the confederation and the cantons and in some other cases. It has appellate jurisdiction in cases which come up from the cantonal courts. And as has been said it now functions as an administrative court. But in the matter of ultimate judicial supremacy the Swiss federal tribunal or supreme court differs from the American. It may nullify a cantonal law if it finds the same to be in conflict with the federal constitution or with federal laws but it has no authority to declare a federal law uncon-

THE SWISS  
JUDICIARY

DECLARING  
LAWS UN-  
CONSTITU-  
TIONAL

A copy of this law (Jun 20 1917) may be found in Leonard D. White, ed., *Civil Service in the Modern State* (Chicago 1930) pp. 363-382.

stitutional On the contrary the Swiss constitution expressly declares that the court shall apply laws voted by the federal assembly <sup>1</sup> This fact is of some significance because it is often contended by American lawyers that no federal constitution with a division of powers can ever prove workable unless some supreme tribunal is given power to keep both the states and the federal government within their own bounds Swiss experience does not show this contention to be valid under all circumstances

Switzerland is the ancestral home of the initiative and referendum In one form or another these institutions of democracy have been used by the Swiss cantons for a very long time and it is from Switzerland that they have spread along the major routes of democratic infection to various other countries including the United States They are perhaps the most remarkable among all the institutions that democracy has produced for they afford a means of lawmaking without the intervention of a legislative body in other words a channel of direct action by the people Nothing in the Swiss political system is more instructive to the student of modern democracy

The initiative is an arrangement whereby a specified number of voters may prepare the draft of a law and may then demand that it either be adopted by the legislature or referred to the people for acceptance at a general or special election If approved by the required majority it then becomes a law The referendum is a device whereby any law which has been enacted by the legislature may be withheld from going into force until it has been submitted to the people and has been accepted by them at the polls Thus the two agencies supplement each other the intent of the one is positive—to secure the enactment of some measure which the legislative body has ignored or declined to pass the intent of the other is negative—to provide a popular veto upon something which the legislature wants but which the people do not As a rule the initiative and referendum go together but they need not be conjoined for either can exist alone <sup>2</sup>

#### Article 113

The present status of the initiative and referendum in Switzerland may be summarized as follows The Initiative is used ( ) in all the cantons except Geneva the revision of amendments of the cantonal constitution (b) in all the cantons except Lucerne, Valais, and Fribourg for the proposing of new laws ( ) in the confederation for proposing constitutional amendments (b) in all the proposing laws The Referendum is used ( ) in all the cantons on amendments to the can-

All the stock objections to the initiative and referendum have been in part verified and in part disproved by Swiss experience. People vote on questions which they do not understand. The peasant often goes to the polls and marks his ballot on some complicated question without any comprehension of what it is all about. Regional prejudice and partisan bias decide the issues in some cases. The system involves expense and puts the people to inconvenience. On the other hand it has been a useful instrument of public education and has developed among the people a lively interest in political affairs. Swiss patriotism has been stimulated by a sense of popular responsibility. Direct legislation moreover has provided the Swiss people with a check upon legislative ineptitude which otherwise would be lacking for there is no executive veto in Switzerland as in America. In any event the great majority of the Swiss people appear to be satisfied with their system of direct legislation and there is no likelihood that they will abandon it. A careful American student of the matter has given his opinion that the advantages in Switzerland far outweigh the defects.

THE VARIED  
LESSONS OF  
SWISS EX-  
PERIENCE

As for local government each Swiss canton has its own constitution and its own frame of government. A few are of the *Landesgemeinde* type that is they are governed by what Americans would call an enlarged town meeting. A general assembly of all the adult male citizens in the canton is called once a year to decide important matters of cantonal policy. This meeting also elects a small council of five members which like the board of selectmen in a New England town functions through the year and performs such duties as the general assembly assigns to it. But most of the cantons are not of this type. They have no general assembly of the citizens. Instead the voters elect a great council as it is called. This council meets frequently and serves as a cantonal legislature—subject, of course to the use of the initiative and referendum.

LOCAL  
GOVERN-  
MENT

tonal constitution, (b) in all of them except Fribourg the departmental ordinary law ( ) in the constitution of the departmental amendments proposed by the federal legislature and (d) in the national ordinary law which is duly introduced by petition. But in the cantons which have the initiative and referendum that is all the law passed by the cantonal council must be submitted to the people which has the prerogative of referendum in the words of a measure is submitted unless prescribed number of citizens petition for it.

R. C. Brooks *Civic* (1930)

*Switzerland Study of Democratic Life* (Chicago)

The people of these cantons also elect an administrative council usually of five or seven members and this body serves as the local executive. Within the cantons are the cities, towns, and villages which are known as communes no matter what their size. In the smaller communes the town meeting type of local government prevails but in the larger ones the people elect municipal councils.

There are several political parties in Switzerland of which the more important are the Radical Democratic, Social Democratic, Catholic Conservative and a Farmers and Workers party. The first named is a progressive middle-class party with well-established traditions and not so radical as its name would imply. The Social Democrats profess Marxian allegiance although, like similar parties in Scandinavia and elsewhere they are not affiliated with the Third International. The Catholic Conservatives comprise two groups one inclining to conservatism and the other to Christian socialist principles. The party group which represents the farmers and workers is an offshoot from the Radical Democratic party but more conservative and especially interested in tariff protection for industry and agriculture. No single group possesses a majority in the Swiss parliament.

## 2 THE SCANDINAVIAN KINGDOMS

Next to Switzerland in point of interest for the student of democracy come the three Scandinavian kingdoms—Sweden, Norway and Denmark. Until 1905 the first two were united but in that year the union was dissolved by mutual consent. In each of the three countries the king is the executive head of the government, but all official actions of the crown are taken on the advice of a cabinet headed by a prime minister. This cabinet is in each case responsible to the national parliament. The executive branch of the governments in all three Scandinavian countries is roughly modelled upon that of Great Britain.

Sweden, the largest and most populous of the Scandinavian realms, has had a long and interesting political history. Students of European history will recall the important role which Sweden played in the stirring drama of European politics during the reign of Gustavus Adolphus in the seventeenth century. The present royal family descends from Bernadotte, one of Napoleon's marshals who was chosen

THE  
COMMUNES

POLITICAL  
PARTIES

THE  
MINISTERIAL  
SYSTEM.

SWEDEN  
HISTORICAL  
BACKGROUND

to the throne as Charles XIV in 1818. There is a formal constitution dating from a few years earlier but it has been greatly supplemented by law and custom during the past century or more. For her parliament Sweden originally had a body of four estates or four chambers representing the clergy, the nobility, the townsmen and the peasantry. Each sat separately and taxes could not be voted unless all four of them concurred. This was too cumbrous an arrangement for modern legislative needs so in 1866 the four estates were reduced to two.

The Swedish parliament or Riksdag now consists of two chambers both elected—one indirectly and the other directly—by the people. The first chamber or upper House is composed of about 150 members who are chosen for eight year terms by the provincial assemblies or *Landstings*. The latter are made up of assemblymen elected by the people in accordance with a system of proportional representation. One eighth of the members of the Swedish upper House finish their terms each year. The second chamber or lower House is a larger body. It has about 230 members all of whom are directly elected by the people for four year terms. Universal suffrage is established in Sweden, but the minimum voting age is twenty four years for voters of both sexes. The country is divided into constituencies each of which elects several members of the lower House on a proportional representation basis. The plan used is the one known as the d'Hondt system, which is rather complicated for explanation here. The result in Sweden, as elsewhere, has been to encourage the formation of multiple party groups and in the present Riksdag there are six or seven of them ranging all the way from Conservatives to Communists.

The two chambers have substantially the same constitutional powers and the ministry is equally responsible to both. This arrangement might seem to be unworkable but it has not proven so in Sweden because the same coalition of party-groups is usually able to command a majority in both chambers. Moreover if the two houses fail to agree on any important measure the ministry can have them called into a joint session where a majority decides the issue. The Social Democrats in

THE  
SWEDISH  
PARLIAMENT

POWERS OF  
THE TWO  
CHAMBERS

For an explanation of the different schemes of proportional representation used in European elections (Hare system, d'Hondt plan, Hagenbach-Bischoff formula, etc.) see A. J. Zuñiga's *The Experiment with Democracy* (New York, 1933) Chapter 10 for a more extended discussion, C. G. Hoag and G. H. Hallett, *Proportional Representation* (New York, 1926).

Sweden have been in recent years the strongest of the various party groups and ministerial coalitions have used them as a basis. Changes of ministry in Sweden are more frequent than in England but there is no such incessant in and out procession of cabinets as in France. An interesting feature of Swedish parliamentary procedure is that all committees are joint committees each chamber being represented by a definite quota of members. This arrangement strengthens the influence of the committees both in parliament and with the ministers.

The Norwegian parliament is *ab initio* a single body known as the Storting. Its members are chosen by direct popular vote with  
 NORWAY universal suffrage and proportional representation. Then after the election the assembly divides itself into two unequal chambers one containing a fourth of the membership and the other three fourths. A few special matters such as impeachment are exclusively given to one chamber. Bills are discussed and passed by each house separately but in case of disagreement the two meet in joint session and the issue is settled by a two thirds vote.

In Denmark the lower chamber is directly elected by universal suffrage but with the voting age fixed at twenty five years or over.  
 DENMARK A system of proportional representation is used. Members of the upper chamber are chosen in two ways—first a certain quota is elected by the outgoing members at the close of their term and second a larger group is elected by popular vote with the minimum voting age fixed at thirty five.

Political parties in all the Scandinavian countries are numerous. But this party decentralization has not led to ministerial instability.  
 PARTIES. The reason is that one party usually manages to secure a sufficiently large representation to facilitate a coalition which can be held together. Socialists or Social Democrats are strong in all three countries but their programs embody a rather mild type of socialism—in tune with the Second (not the Third) International. Their platforms are not more radical than that of the Labor Party in Great Britain.

### 3 POLAND

The new Polish Republic is made up of territories wrested by treaty from three great pre war empires—Austria Germany and Russia. Down to the last quarter of the eighteenth century as everyone

knows Poland was an independent monarchy with that strangest of all executive headships an elective king. In the old Polish parliament moreover there was a rule that nothing could be done no tax levied no law enacted save by unanimous consent. Every member of the parliament had an absolute veto. He had merely to rise and say I object whereupon a proposal could go no further. He could even compel a dissolution of the parliament by declining to attend its session. This absurd system engendered political stagnation while the elective kingship with its recurrent contested or indecisive elections invited civil war and foreign aggression. The political history of Poland in the seventeenth and eighteenth centuries is replete with lessons to the student of modern government.

EARLY  
HISTORY  
A. D. GOV-  
ERNMENT

Poland had the misfortune to possess strong and avaricious neighbors. Frederick the Great of Prussia was particularly envious because some Polish territory which reached to the Baltic at Danzig intersected his own Prussian provinces. Austria and Russia were also casting lustful eyes upon the fertile Polish acres which lay contiguous to them. At any rate these three powers joined their forces and in 1772 accomplished the first partition of the country. Poland was considerably reduced in size her elective kingship became hereditary and the *veto liberum* was abolished. A second partition followed in 1793 and two years later the last remnants of the old monarchy were divided up. Poland as an independent state disappeared from the map. During the next hundred years there were nationalist revolutions which attempted to regain for the people their right of self-determination but in every case they were put down and the tripartite domination of Poland by alien powers continued until the World War.

THE VARIOUS  
PARTITIONS  
OF THE  
COUNTRY

Proposals for the restoration of Poland were made from allied quarters during the course of the struggle and after America's entry into the war this restoration was included by President Wilson in his famous statement of aims commonly known as the Fourteen Points. The victory of the allied and associated powers ensured the consummation of this design and in the settlements which followed the close of the war the territories which now form the Polish Republic were consolidated. Meanwhile on the collapse of the German and Austrian armies a constituent assembly was called and in due course a republican constitution was framed. The new Poland is made up of territories

THE POST-  
WAR RESTO-  
RATION

covering about the same area as California with a population of about twenty-eight millions

The Polish Republic adopted a constitution in 1921 with provision for a government modelled closely upon that of France. But this government did not acquire sufficient stability to deal energetically with the difficult problems which faced the new republic and in due course Marshal Pilsudski the Polish war hero took control of the government by a *coup d'état* (1926). For a time he endeavored to manage affairs under the existing constitution but in the end found himself forced to secure a majority in parliament by the use of repressive measures. Finally in 1935 his followers put through a new constitution.

Under this new constitution the chief executive power in Poland is vested in a president who is chosen by popular vote for a seven year term. But the method of nominating candidates for this office is a unique one and can be used to nullify popular participation in the choice. First of all an electoral commission is created by the Polish parliament. This commission consists of twenty five members selected by the upper chamber and fifty by the lower together with five high public officials. It nominates one candidate and the retiring president of the republic has the right to nominate another. The voters then choose between these two nominees at a general election. But if the retiring president fails to make a nomination the candidate of the electoral commission takes office without an election. And that is what is likely to happen under a quasi-dictatorship.

The president is advised by a ministry which is chosen by himself. But he may act in various important matters on his own prerogative without the necessity of ministerial approval. The ministry may be dismissed by the president at any time. If the two chambers of the Polish parliament agree in demanding the resignation of the ministry or of an individual minister the president must either see that the request is complied with or as an alternative he can dissolve the parliament and order a new election. But the two chambers do not often agree and it has become possible for the president to concentrate nearly the whole range of governmental powers into his own hands. He can issue on his own authority decrees having the force of law.

In the Polish parliament the upper House is composed of two ele



ments. One third of the members are appointed by the president of Poland; the remaining two thirds are chosen by electoral collegiums the members of which are elected by a very limited category of voters. There are seventeen districts and an equal number of electoral colleges. To qualify as a voter in these elections one must be at least thirty years of age. The lower House, on the other hand, is made up of 203 deputies who are elected by secret ballot and universal suffrage, with the age limit for voting set at twenty-four years. Each of 104 districts is entitled to elect two deputies, but their choice is restricted to a list of four who are nominated in each district by an electoral committee.<sup>1</sup> The deputies serve for a five-year term unless a dissolution of parliament intervenes. All proposals of legislation must originate either in the cabinet or in the Sejm or lower House, and the assent of the latter is necessary for the enactment of all laws. The Senate may amend or reject any measure, although the lower House can then override its action by a three-fifths vote. But a large part of the law-making during recent years has been by executive decree. While political parties still exist in Poland, several of them, they are not permitted, as such, to have representatives in parliament.

THE  
SENATE.

THE SEJM.

#### 4 CZECHOSLOVAKIA

Czechoslovakia includes the ancient kingdom of Bohemia, with the territories of Moravia, Silesia, and Slovakia. Prior to the war Slovakia was part of Hungary; the others were within the old Austrian empire. This new republic is a landlocked peninsula about six hundred miles in length, thrust westward into the heart of Europe. It has about fifteen million people within its borders; its total area roughly approximates that of New York State. While Czechs and Slovaks constitute a large majority of the population, there are about three and a half million Sueten-Germans, most of whom inhabit a border belt in the northernmost part of the country. The independence of the Czechoslovak Republic was proclaimed during the toppling days that marked the close of the war in 1918, and a provisional constitution was put into force about a month later.

THE  
CZECHOSLOVAK  
REPUBLIC.

The electoral committee is made up of delegates from municipalities, chambers of commerce, labor federations, and other organizations.

This provisional document was supplanted by a permanent constitution in 1920

The Czechoslovakian constitution of 1920 owes much to the French system of national government. It provides for a president, elected for a seven year term by the two chambers of parliament in joint session. Election on either of the first two ballots requires a three fifths vote, but if no candidate can muster that degree of strength a majority suffices to elect on the third ballot. From 1920 to his resignation in 1935 the eminent scholar and statesman, Thomas G. Masaryk, served as president, having been twice reelected. He was succeeded in 1935 by his p o t e e Edward Benes.<sup>1</sup> The president of Czechoslovakia acts on the advice of a ministry which is responsible to parliament. Like the President of the United States he may veto legislation, but his veto power is a suspensive one only for it can be overridden by a bare majority in both chambers or by a three fifths vote in the lower chamber alone.

Both chambers of the Czechoslovakian parliament are directly elected by the people. Universal suffrage is in vogue. But there are two different electorates. All persons over twenty-one years of age are entitled to vote for members of the lower House while the suffrage in the case of elections for the upper House is narrowed to persons who have reached the age of twenty-six. Elections are conducted in accordance with a system of proportional representation by which the voters express their choice for parties, not for individual candidates. One result of this has been to encourage the multiplication of political parties, of which there are now fourteen or fifteen in all. In the present lower House of 300 members (elected in 1935) the strongest party group has only forty five representatives, while no fewer than six other parties have twenty or more seats. The result is that Czechoslovakian ministries are always of a composite character and are dominated by a committee of party leaders representing the several groups within the coalition. The power of life and death over Czechoslovakian cabinets has thus passed into the hands of a managerial ring known as the Petka which is made up of party-group leaders or bosses who have no legal status but who meet regularly in secret and agree upon governmental policies which the ministry must carry out or lose office.

*Produced Betexh.*

The constitution of Czechoslovakia provides that both chambers of parliament have an equal share in lawmaking except in the case of the budget and army bills which must originate in the lower House. But if the upper House rejects any measure that has been passed by the lower chamber the latter can make its will effective by an absolute majority of all its members. The interpellation procedure is used as in France but with limitations which make it much less of a threat to ministerial stability. No debate follows the answer to an interpellation unless a majority of the members vote to have one.

PROCEDURE

An interesting feature of the Czechoslovakian governmental system is the tribunal known as the constitutional court. This special court is made up of seven judges of whom three are appointed by the president of the republic while the remaining four are chosen two each from the regular supreme court of Czechoslovakia and from the supreme administrative court. Its sole function is to pass on the constitutionality of laws but to declare a national law unconstitutional it is required that at least five of the judges shall concur in the decision. Although provision was made for this court more than seventeen years ago it has never been called into session or given any cases to decide. This is partly because the constitution provides that an issue of constitutionality cannot be raised by private parties but only by the public authorities.

THE CONSTITUTIONAL COURT

The absorption of Austria by the German Reich in 1938 involved the virtual encirclement of Czechoslovakia by her powerful neighbor. It raised in an acute form the problem of granting autonomy to the Sudeten German minority. The government of Czechoslovakia made large concessions along this line but it may be doubted whether they will prove adequate to prevent the German Reich from ultimately repeating its Austrian venture by annexing Czechoslovakia in whole or in part. For protection against such a move Czechoslovakia has looked to France but one cannot be certain that such assistance would prove adequate at a critical juncture.

FOREIGN RELATIONS

## 5 YUGOSLAVIA

Unlike Czechoslovakia the kingdom of Yugoslavia is only in part a succession state. Yugoslavia is the old Serbian monarchy nearly trebled in size. For a time it was officially known as the kingdom of

the Serbs Croats and Slovenes but in 1929 the name was changed to the kingdom of Yugoslavia Serbia was for a long time under the control of Turkey but like the other Balkan States achieved its independence (1878) Outside her own boundaries however there remained large Yugoslav elements especially in Austria and Hungary and it was the hope of the Serbian leaders that these might by some means be federated with herself into a Greater Serbia This nationalist aspiration was the taproot of the ill feeling between Belgrade and Vienna for it could never be brought to fulfillment without a disruption of the existing Hapsburg empire

The allied victory gave the Yugoslavs their opportunity and soon after the armistice they merged into a unified kingdom under a new name When various boundary disputes had been settled and after Montenegro had been added to the new state the kingdom adopted a constitution in 1921 This was framed as in other succession states by an elective assembly The kingdom of Yugoslavia has a population of about twelve millions and an area somewhat larger than that of Kansas

Yugoslavia is a limited monarchical state with a constitution which was adopted in 1931 Provision is made for a ministry to advise the king but this ministry is ostensibly responsible to the king alone During the minority of the monarch the powers of the crown are being exercised by a committee of three regents The parliament consists of two houses a Senate and a Chamber of Deputies Half the total number of senators are chosen by a very limited electorate and the other half nominated by the crown Members of the lower House are elected on a basis of manhood suffrage but the voting is oral and public The secret ballot is never used It is also provided that each voter shall indicate his choice for a party list not for individual candidates The party which obtains a plurality of votes is entitled to two thirds of the seats the remaining seats being distributed proportionally among the minority groups This it will be noted is the plan which was established in Italy in 1923 but later abolished

All the old political parties have been eliminated in Yugoslavia and the constitution forbids their revival in any form It provides that new parties may not be formed on any regional racial or religious basis But various new political parties have come into existence although the govern

THE  
KINGDOM  
OF THE  
SERBS,  
CROATS AND  
SLOVENES.

THE  
PRESENT  
SYSTEM OF  
GOVERNMENT

POLITICAL  
PARTIES  
ABOLISHED

ment party known as the Yugoslav Radical Union has full control of the chamber. As the voting at elections is both oral and public the government has no reason to be afraid of losing this control.

1 SWITZERLAND The most recent book on Swiss government is W. E. Rappard *Government of Switzerland* (New York 1936) but there is much good material in R. C. Brooks *The Government and Politics of Switzerland* (New York 1918) and in the same author's *Constitution in Switzerland Study of Democratic Life* (Chicago 1930). Abundant bibliographical references may be found in these books. In Lord Bryce's great study of *Modern Democracies* (2 vols. New York 1911) there is a hundred page survey of the Swiss political system with many illuminating observations.

2 THE SCANDINAVIAN KINGDOMS Political history outlined in R. N. Bain *Scandinavia A Political History of Denmark, Norway and Sweden* (Cambridge England 1905). E. C. Bellquist *The Development of Parliamentary Government in Sweden* (Berkeley, California 1937) is a careful study and M. W. Childs *Sweden The Middle Way* (New Haven 1936) explains the workings of Swedish democracy. Mention should also be made of H. L. Backstad *The Constitution of the Kingdom of Norway* (London 1905) and F. C. H. *Denmark A Comparative Commonwealth* (New York 1922).

3 POLAND R. Machray *Poland 1914-1931* (London 1931). R. Landau *Poland and Poland* (New York 1929). R. Dyboski *Poland* (Modern World Series London 1933) and S. Karlin *Poland Past and Present* (New York 1934).

4 CZECHOSLOVAKIA T. G. Masaryk *The Making of a State* (New York 1927). J. Hoetzel and V. Jochem *The Constitution of the Czechoslovak Republic* (Prague 1920) and J. Chmelar *Political Practice in Czechoslovakia* (Prague 1926).

5 YUGOSLAVIA C. A. Beard and G. Radin *The Bill of Rights in Yugoslavia A Study in Government and Administration* (New York 1929). K. S. Pittin *The Kingdom of the Serbs, Croats and Slovenes* (Washington 1918) and A. Mouret *Le Régime Serbo-Croate Slavons et Monténégro et la République* (Paris 1926).

## CHAPTER XLIII

### THE GOVERNMENT OF JAPAN

Every nation must lie upon the lines of its own experience. Nations are no more capable of borrowing experience than individuals are.—*Woodrow Wilson*

In a book on European governments for American readers it may seem irrelevant to include even as a supplement a brief description

A WORD OF  
EXPLANATION

of the structure and functions of government in Japan. Yet the government of Japan is in a sense European for many of its principal features were borrowed from

Europe. It may be interesting to see how they have developed in the new environment. One of the great political scientists of a generation ago in the quotation which stands at the head of this chapter declared that no nation can successfully borrow the experience of others. But Japan has done it—to a considerable extent. Her scheme of national government derives from Great Britain through Prussia; her system of local government from France; and her industrial technique from the United States. Her banking system was imported from England and her jurisprudence harks back to the civil law of Rome. Among the political institutions of Japan very few are native born. Manhood suffrage, ministerial responsibility, a privy council, political parties, a bicameral parliament with a House of Peers, the secret ballot, prefects and mayors, national law codes, trial by jury, and administrative courts—none of these are indigenous to Japan. All of them, and many other features of Japanese public life have been borrowed from the experience of foreign lands.

There are other reasons why this government should be of interest to Americans. The Japanese are our most powerful trans-Pacific neighbors. When one takes Alaska and the Philippine Islands into account, they are also our nearest trans-Pacific neighbors. With them we have developed a

OUR  
INTEREST  
IN JAPAN

large commercial intercourse and in many parts of the world they have become our keenest competitors for trade. All things considered, it is by no means improbable that the eyes of America will become more intently focussed on the Pacific area during the next generation. With the development of commercial air transport the

rivalry between the two most powerful nations on either side of that ocean is likely to become more intense. Accordingly it may not be amiss for young Americans to learn something about Japan's governmental organization and political ideals.

The Japanese empire consists of four principal and adjacent islands together with the island of Formosa which was acquired from China in 1895 several smaller islands the southern half of the island of Saghalien (obtained from Russia in 1905) and the peninsula of Korea or Chosen. In addition Japan holds the mandate for various Pacific islands which were surrendered by Germany at the close of the World War she exercises a protectorate over Manchukuo (Manchuria) and she has some leased territory in China. Japan proper (the four principal islands) has an area roughly comparable to that of California. But her population is nearly 70 000 000 or almost twelve times that of California. Thus the density is not far from 400 persons per square mile which is considerably higher than that of Connecticut one of the most thickly populated of the American commonwealths. Other territories under Japanese control (including Manchukuo and the leased areas in China) have a population of about thirty millions more. Mountains and other non arable areas comprise a large portion of the four principal Japanese islands and in consequence the people are not able to support themselves from the agricultural production of the land. The country moreover is very poorly endowed with natural resources there is very little oil the coal deposits are not of high quality and what iron ore there is happens to be of low grade. That a country so poorly supplied with natural resources should have so quickly become a great industrial power is one of the miracles of modern civilization.

The history of Japan as an empire goes back a long way. The Japanese claim that its origin dates from 660 B. C. and that their present emperor is a descendant of their first in unbroken line. In its early stages Japan was ruled by tribal chiefs among whom the emperor was merely regarded as the dominant one divinely appointed to be above the others. But in the course of time the emperor gained additional power only to lose it again—first to a civilian and subsequently to a feudal hierarchy. The head of this feudal autocracy was a generalissimo known as the shogun whose position was first created by the emperor in the thirteenth century.

AREA,  
POPULATION  
A. D. 1905  
50 'REES

EARLY  
HISTORY

THE  
GOVERNMENT

and became hereditary. This official established his capital at a point remote from the emperor's court and virtually ruled the whole empire through his own military governors and through the feudal lords (daimyos).

But he did it all in the emperor's name. His position was that of a hereditary regent, not merely during the emperor's minority but during his entire reign. While each successive shogun was formally invested with his office by the emperor, he ruled without consulting the latter. At the beginning of the seventeenth century the shogunate passed to members of the Tokugawa clan, who held it for more than two hundred and fifty years, with their capital at Yedo (now Tokyo) while the emperor had his capital at Kyoto. Great shoguns there were during the early part of the Tokugawa era, especially Ieyasu and his grandson Iyemitsu, whose achievements have been superbly memorialized in the great Temple of the Shoguns at Nikko—visited without fail by every American tourist to Japan.

The shoguns were assisted in their task of governing by two councils: one of elder statesmen and one of younger advisers. Members of the former held office for life and filled vacancies in their own ranks. They also appointed their junior associates. It was the function of the elder statesmen to prepare decrees for the shogun's signature, to serve as his ministers in carrying on the work of administration, and to supervise the feudal lords each of whom governed his own small domain. The members of the junior council assisted them in this work. Within each feudal fief the lord had his vassals or retainers (samurai) roughly corresponding to the knights in feudal Europe. Thus although there was no historical connection between the two, European and Japanese feudalism developed along somewhat similar lines.

The old government of Japan came to an end in 1868. The change was accomplished by the Restoration, a virtually bloodless revolution in the course of which the ruling shogun abdicated and the ancient form of direct imperial government was restored. There were various reasons for the collapse, as there had been for the downfall of the old regime in France three quarters of a century earlier. The feudal government had become enervated and corrupt. But there was a special reason in Japan's case—the opening of the country to foreigners and foreign trade. The government of the shogunate had acceded to

AND THE  
GREAT  
TOKUGAWA  
SHOGUN

THE OLD  
COUNCILS

THE  
RESTORA-  
TION OF  
1867-1868



foreign demands and had become unpopular with the Japanese people who believed that foreign intercourse was merely a prelude to foreign aggression. The moving spirits in the Restoration were the leaders of certain powerful clans in the southwestern part of the country who had been largely excluded by the shoguns from any share in government and who hoped to gain it under an imperial regime.

Following the termination of the shogunate came the abolition of the entire feudal system. This was accomplished in an imperial rescript by which the ownership of the land was transferred from the feudal lords to the emperor. Most of the lords had assented to this transfer before it was officially decreed, being won over by promises of various compensations. Class privileges were also abolished, and the feudal knights (samurai) who had formerly been forbidden to engage in business were now conceded this privilege. And for the first time all Japanese were made equal before the law. This did not, however, imply the permanent erasing of the nobility. In due course the former feudal lords, as well as the older civilian nobles, were given hereditary titles after the European fashion—marquis, count, baron, and so forth.

JAPANESE  
FEUDALISM  
ABOLISHED  
(18 8)

#### THE CONSTITUTION OF 1889

When the emperor assumed the reins of government after the Restoration, he promised that a parliament would be established in Japan, and all measures of government decided in accordance with the will of the people. For the time being, however, the old councils of the shogunate era were retained in slightly altered form. A little later they were replaced by three new bodies—a privy council, a senate, and a supreme court. All three were composed of appointive members, and these members were drawn in the main from the clans which had successfully promoted the Restoration. But this clan government engendered a great deal of criticism, and in due course there developed a movement for the introduction of a parliamentary system. To meet this demand, the emperor promised in 1881 that a constitution would be granted and an elective parliament established as soon as a thorough study of the country's political needs and capacities could be completed. Meanwhile the councils in the districts, cities, and villages were placed on an elective basis.

THE  
TRANSITION  
ERA (1868-  
1889)

Instead of calling a constitutional convention to prepare the new

constitution the emperor appointed his prime minister Marquis Ito to do the work.<sup>1</sup> This competent statesman had already made a careful study of American and European governments. To assist him in his task of constitution making he now enlisted the services of three Japanese experts and the first draft of the new document was made by them under the prime minister's supervision. Then it was laid before the privy council and carefully considered at secret sessions with the emperor presiding. After various changes had been made by the council the constitution was promulgated in 1889 by imperial decree. It was not made public for discussion by the people before being issued to them, nor was it submitted to anyone for ratification. But an elaborate commentary on the new constitution explaining its various provisions was simultaneously issued for the information of the public.

The Japanese constitution of 1889 is a concise document occupying fewer printed pages than does the Constitution of the United States. In addition to a preamble it has only 76 articles arranged in seven chapters.<sup>2</sup> But this is because the Japanese constitution does not form the entire organic law of the empire. It is supplemented by various imperial ordinances dealing with such matters as the succession to the throne, the peerage, elections, and finance, all of which were promulgated simultaneously with the constitution itself. Taking this whole group of documents together they form a very elaborate basis of government. And most of the ideas embodied in them were borrowed

It should be remembered, however, that as early as 1876 a formal commission had been appointed to draft a constitution and in 1880 had submitted a complete project to the emperor. It was not adopted but along with various other schemes and memorials of the same period it formed a basis which Ito and his colleagues later utilized. See the article on "The Japanese Constitution" by Kenneth Colgro in the *American Political Science Review*, Vol. XXII, pp. 1027-1049 (December 1937).

This column entitled *Commentary on the Constitution of the Empire of Japan*, has frequently been likened to *The Federalist* which was written by Alexander Hamilton, James Madison, and John Jay as a means of guiding the American constitution. In fact, in the several states As the Marquis Ito and one of his expert helpers (Baron Kan'kō) were familiar with American constitutional history it is by no means improbable that they had the precedent of *The Federalist* in mind. An English translation of Ito's *Commentary* may be found in any good library.

A French translation is given in F. R. and P. Daresté *Le constitutionnalisme moderne* (4th edition 5 vols. Paris, 1928-1933) Vol. V, pp. 551-582, and an English translation may be found in Harold S. Quigley *Japanese Government and Politics* (New York, 1932) Appendix IV.

HOW THE  
WORK OF  
PREPARING  
A CONSTITUTION WAS  
DONE

GENERAL  
CHARACTER  
OF THE  
DOCUMENT

rowed from abroad. It is commonly said that Prime Minister Ito took Prussia as his model of national government and that is doubtless true but it is to be remembered that the Prussian constitution had in turn been modelled upon that of England. So what one might say is that Japan in 1889 equipped herself with a variant of the Prussian adaptation of the British political system. In any event one can hardly gainsay the statement that the Japanese political system of to-day bears a closer resemblance to the British than to the Prussian pattern. Nothing of any consequence by the way was copied by the framers of the Japanese constitution from the government of the United States.

The Japanese constitution to use Gladstone's expression was struck off at a given time by the hand and brain of man and bestowed upon the nation by imperial command. Amendments therefore can only be made on the initiative of the emperor but the constitution provides that subsequent approval by a two-thirds vote in both houses of parliament is also required. As a matter of fact the Japanese constitution has not had a single amendment added to it since 1889 but this does not mean that it has stood unchanged during these fifty years or thereabouts. Like the Constitution of the United States it has been altered and developed by interpretation by statute and by usage. It has been enlarged by the simple process of having the Japanese parliament enact laws which go beyond the words of the constitution this being a safe procedure because no court in Japan can declare any law unconstitutional if it has been duly enacted by parliament and has received the emperor's assent. When therefore the Japanese decide to have things done in a different way from heretofore they do not spend time in debating whether such action would be constitutional. They merely go on the principle that since the throne is the source of the constitution any law to which it gives assent must be within the constitution. And in any event the Japanese constitution is couched in such general terms that it leaves plenty of room for statutory development. As respects the method of amendment therefore the written constitution of Japan and the unwritten constitution of Great Britain are on the same footing.

In the United States all questions of constitutional interpretation are decided by the regular courts and in the last analysis by the supreme court. In Japan both the ordinary and the administrative courts each in their own field have the function of interpreting the

provisions of the constitution so far as their bearing upon private individuals is concerned. They determine for example whether the constitution and the laws give or do not give an individual certain rights. But when disputes arise in Japan between two branches of the government (for example concerning the respective powers of the two houses of parliament) the matter is settled by a decision of the privy council. No issue of this character strange to say has arisen during the past forty five years. Let it be repeated however that neither the regular courts nor the administrative courts nor the privy council can declare any imperial law to be unconstitutional. They can interpret but they cannot invalidate. This restriction upon the power of the courts however does not apply to the ordinances and decrees which are issued by the ministers or by their subordinates to carry out the provisions of the imperial laws. If an ordinance is at variance with either the constitution or the laws it may be held invalid.

#### THE EMPEROR AND HIS ADVISERS

Japan is a hereditary empire with the succession vested in the Yamato dynasty. It goes to male descendants of this line according to the principle of primogeniture. No provision is made for female succession to the throne. But the detailed rules relating to the succession are not embodied in the constitution which merely provides that the empire shall be reigned over and governed by a line of emperors unbroken for ages eternal.<sup>1</sup> They are set forth in a separate document which was promulgated in 1889 as the Imperial House Law. This law cannot be altered by parliament. The present Japanese emperor is Hirohito grandson of the emperor Meiji who was restored to power in 1868.

In an earlier chapter of this book it was pointed out that the British philosophy of government makes a distinction between the powers of the king and the powers of the crown. The same is true in Japan but to a lesser degree. The emperor reigns but does not rule. There has been much controversy among Japanese constitutional jurists as to whether the emperor is *theoretically* an absolute monarch and hence whether he could if he so chose revoke the con-

<sup>1</sup> The unbroken line of male descendants is sometimes maintained in Japan by the process of adoption. If a father has no sons he may (and usually does)

stitution and abolish the Japanese parliament. But these legal dialectics need hardly concern the student of political actualities. And the actualities of the situation are that short of a revolution or *coup d'état* the Japanese emperor could not resume the powers which he possessed prior to 1889. His position is that of a limited monarch with limitations which are none the less effective by reason of the fact that they were originally self imposed.

On the other hand the personal political discretion of the Japanese emperor is considerably greater than are the prerogatives of the British king. This is because the imperial advisers in Japan unlike the royal advisers in Great Britain do not constitute a single group. In the British system of government all official advice that is tendered to the throne must come from the ministry. In Japan it comes from several advising agencies. First there is a ministry or cabinet with a prime minister at its head and on most questions of public policy the advice of this body must be followed. But in the second place there is the agency known as the supreme command a group of military and naval authorities, and the advice of this group is followed in matters relating to the national defense. Third there is the privy council a body quite distinct from the cabinet which has various functions of an advisory nature in relation to the throne. Fourth the emperor has an extra-constitutional source of advice in emergencies from the *genro* as will be presently explained and finally there is an imperial household ministry a small group of palace officials who are the emperor's confidants and as such have a considerable influence upon his political views. Deriving advice from this variety of sources the Japanese emperor is able to exercise (in outward appearance at least) a much greater degree of personal discretion than is permitted to the British king.

The Japanese constitution like the American makes no provision for a cabinet. But it does provide for individual ministers. Likewise it declares that these ministers shall give their advice to the emperor and be responsible for it. All laws, ordinances and other imperial actions so far as they relate to affairs of state require the countersignature of a minister. There is a prime minister and twelve other ministers who together

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form the Japanese cabinet they meet once a week or oftener their discussions are secret and they present an outward alignment of cabinet solidarity as in England. The twelve portfolios in the Japanese cabinet (one or more of which may be assumed by the prime minister) are foreign affairs home affairs overseas affairs finance war; navy justice agriculture commerce communications rail ways and education. Members of the cabinet do not need to have seats in either house of parliament as in Great Britain on the other hand they are not debarred from being members of the legislative body as in the United States.

The Japanese constitution likewise makes no mention of ministerial responsibility other than that the ministers shall be responsible for

IL MINISTERIAL  
RESPONSIBILITY  
ITS  
NATURE IN  
JAPAN

advice which they give to the emperor. But responsible to whom? To the emperor or to parliament?

There are those who believe that the framers of the constitution were intentionally ambiguous on this point. But as a matter of practice the cabinet has recognized a considerable degree of responsibility to the representatives of the Japanese people in parliament although this responsibility has not yet become so clear and direct as it has grown to be in Great Britain. An adverse vote in the Japanese House of Representatives does not necessarily mean the resignation of the ministry or a new election. On the other hand no ministry can function in Japan if it has to face day in and day out a hostile majority in the House. One might perhaps express the matter in this way. The Japanese ministry is responsible to the lower chamber of parliament in that the business of government cannot be carried on for any considerable length of time without a general measure of parliamentary cooperation but it is not required to obtain parliamentary endorsement for every action of the government. And this must inevitably be the situation so long as the ministry is not the sole agency from which the emperor receives and accepts advice.<sup>1</sup>

Mention has already been made of the fact that on questions relating to the national defense and warlike operations the emperor is not

THE  
SUPREME  
COMMAND "

advised by his cabinet but by a group of military and naval agencies which includes the minister of war and the minister of the navy together with the chiefs of the general army and naval staffs. The minister of war is always an army

In 1937 provision was made for the calling of an advisory ministerial council with an enlarged membership to consider important problems and policies.

officer of high rank and the minister of the navy a high ranking officer in that branch of the service. No civilian has ever been regularly appointed to either post. And the two ministers just named are expected to function in a dual capacity. As regular members of the cabinet they take part in all its deliberations even on purely civil matters and help formulate the advice which is communicated to the emperor on behalf of the cabinet by the prime minister. But they also serve as members of the supreme command and in this capacity they tender advice to the emperor quite independently of the other ministers and indeed without the necessity of consulting them. This dualism of course leads to all sorts of trouble because the exact line of demarcation between the cabinet's jurisdiction and that of the supreme command is difficult to draw. An increase in armaments for example may be advised by the supreme command but such an increase requires money and it is the cabinet's responsibility to get this money voted by parliament. Thus it may be placed in the position of having to urge expenditures which it does not approve.

The military and naval authorities in Japan have a means whereby they can virtually compel any cabinet to meet their wishes or go out of office. No prime minister can form or maintain a cabinet without a minister of war and a minister of the navy. These as has been pointed out must be high ranking officers in their respective branches of the service. But no such officer will accept or retain a post in any cabinet if it pursues a policy which is regarded by the army and navy chiefs as detrimental to the interests of the national defense. Accordingly a new prime minister must reach some understanding with the military and naval leaders before he can get his cabinet constituted and he must continue to satisfy them in a general way otherwise he will have two resignations with no one available to fill the vacancies.

This lack in complete subordination of the armed forces to the civil authorities is a feature which distinguishes the Japanese governmental system from the British, French and American—indeed from virtually all other governments whether democratic or dictatorial. It has far reaching implications especially upon the conduct of foreign affairs. Movements of troops and war vessels are ordered by the supreme command in the name of the emperor without the necessity of obtaining approval from the minister of foreign affairs or even consulting him. Yet such movements may greatly hamper the foreign office in its negotiations

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Repeatedly indeed the world has seen the Japanese foreign office giving assurances of peaceful intent while the army and navy of Japan were acting in complete disregard of them<sup>1</sup> Such a situation can hardly endure forever It must ultimately be resolved by giving a clear primacy to one side or the other—to the cabinet or to the supreme command

By reason of a similarity in names the privy council of Japan is often assumed to be a replica of the historic English body And it is true that so far as their membership goes the two are somewhat alike But the Japanese privy council is smaller in size and larger in powers Members of the cabinet are *ex officio* members of this privy council during their tenure of office Other members are appointed for life by the emperor on advice of the prime minister who also nominates the president of the council Most of the appointees are persons who have rendered notable service to the empire—diplomats statesmen generals admirals judges and men of distinction in the domain of scholarship The council's meetings are not public although minutes of the proceedings are kept

As respects their powers and functions however the Japanese and British privy councils are entirely dissimilar The powers of the British privy council are almost wholly exercised by the cabinet which is an offshoot from the council The powers of the privy council in Japan according to constitutional theory are merely consultative it advises the emperor when he asks its advice and on no other occasion But in fact it does a good deal more than this Questions relating to the interpretation of the constitution or the organic laws are referred to it for decision and its rulings are accepted It passes upon treaties and certain imperial ordinances Measures which the cabinet has recommended to the emperor are frequently submitted to the privy council and the council sometimes advises that these measures be sent back to the cabinet for amendment The privy council is not responsible to parliament

Another participant in the giving of advice to the throne is the *genro* or group of elder statesmen No provision was made for such a group in the constitution Originally the elder statesmen were a few

That is why President Roosevelt on December 1937 requested that protest which the United States sent to the Japanese foreign office should be communicated directly to the emperor



able and experienced men who beginning about 1900 assumed the duty of advising the emperor whenever an emergency arose—such as the resignation of one cabinet and the formation of another a proposed declaration of war or the negotiation of important treaties At the outset the group included some six or seven members But as these original members died their places were not filled and today there is only one left (Prince Saionji) Although over eighty years of age this sole survivor is always summoned for consultation by the emperor when a new prime minister is to be chosen or whenever any other official action of great importance is to be taken It is assumed that when Prince Saionji dies the institution will come to an end but a few years ago in the course of a ministerial crisis the emperor called together a group of former prime ministers for consultation This action has been taken in some quarters to mean that the practice of seeking confidential advice at times from a small extra legal group of elder statesmen may prove to be a permanent feature of Japanese government

Under the general direction of the ministers the work of public administration in Japan is carried on by the civil service There has been a civil service system in Japan since 1885—almost as long as in the United States All administrative positions except the very highest are now filled under civil service rules Competitive examinations are largely used but other evidences of qualification may be substituted in exceptional cases In the case of examinations for the higher posts the method of rating the candidates is left to the committee in charge but no means are certified to fill specific vacancies The entire list of successful candidates is given to the appointing authorities and the choice of anyone on the list is at their discretion This differs from the usual American practice which is to submit the three highest names and to require that one of these be selected

Promotions in the Japanese civil service are not made in accordance with any regular system of personal ratings although certain efficiency records are kept and utilized Seniority counts for a great deal in Japan both inside and outside the government service Political influence is by

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no means a negligible factor in connection with appointments and promotions but it is not the controlling one as so often happens in the United States. Nor are numerous dismissals ordered when a new administration comes into power. There are securities against compulsory separation from the service. Public employees in Japan look upon the government service as a career; they are reasonably well paid as Japanese salaries go, and are entitled to a pension on retirement. With certain exceptions they are permitted to organize but their organizations must not affiliate with any union of workers in private employment.

### THE JAPANESE PARLIAMENT

The imperial Japanese parliament is composed of two chambers, a House of Peers and a House of Representatives. Both meet for annual sessions in a palatial structure which has recently been built in the center of Tokyo at a cost of over eight million dollars. The Japanese House of Peers is not the product of a historical evolution like the British House of Lords. Nor is it like the latter body almost wholly composed of members who have inherited their seats. On the contrary about half its members are not peers at all; that is, they do not belong to a hereditary caste. The members of this half are appointed or elected either for life or for a term of years.

The hereditary element in the House of Peers includes all members of the imperial family over twenty-one years of age, likewise all princes and marquises over thirty.<sup>1</sup> Counts, viscounts, and barons are not, as such, entitled to seats but have the right to choose a designated number from their own ranks for terms of seven years. There are about 200 members of the nobility in the House. In addition to these peers by birth the heavier taxpayers elect, in each prefecture, one or two representatives who are thereupon appointed to the House of Peers by the emperor for seven year terms. Likewise the Imperial Academy of Japan (a body consisting of the empire's most notable savants) is entitled to be represented by four of its members to serve for a similar term. Finally there is a large group (about 125) made up of persons appointed for life by the emperor on the recommendation of the prime

The rank of "prince" in Japan is not confined to members of the imperial family. It may be conferred (like that of duke in England) upon persons outside the court circle.

minister because of their meritorious services to the public welfare. These constitute the most active and the most influential members of the Japanese upper chamber. Most of them are men who have served in public office or who have had a large amount of administrative experience in business enterprises.

The organization of the House of Peers is not fixed by the constitution but by an imperial ordinance which accompanied the constitution. It cannot be changed except with the consent of the House itself. The powers of the House of Peers are substantially the same as those of the House of Representatives except that appropriations must originate in the lower House. But unlike the British House of Lords which cannot amend or reject money bills, the Japanese House of Peers may deal as it pleases with such measures. In this respect its authority is similar to that of the United States Senate. But it does not have the power to try impeachments—a function which belongs to the upper chamber in both the United States and Great Britain.

ITS ORGANIZATION  
AND  
POWERS

The House of Peers exercises a much larger influence upon public policy in Japan than does its prototype in Great Britain. This is because it has not been stripped of important powers as the latter was by the Parliament Act of 1911. On the other hand the Japanese upper chamber does not play the highly important part which has been assumed by the Senate in the American system of government. There are three reasons for this: *first* because it has no important special powers; *second* because it is not an elective body and cannot regularly stand up against the will of the lower chamber which is elective; and *third* because the cabinet (although theoretically responsible to neither of the Japanese chambers) has in practice quite naturally shown itself more deferential to the elective one. One might say perhaps that the Japanese House of Peers occupies a place somewhat similar to that of the Senate in the French Republic although these two bodies are quite differently constituted.

ITS INFLUENCE

The House of Representatives in Japan is composed of about 450 members elected by the people. The country is divided into constituencies each of which elects from three to five representatives by secret ballot. The suffrage includes all male Japanese citizens twenty-five years of age and over but candidates for election must have attained the age of thirty years. Members of the nobility and persons in active military service

THE HOUSE OF  
REPRESENTATIVES

are not permitted to vote or to become candidates at elections for the House of Representatives. Women have not yet been enfranchised in Japan. Some years ago a measure giving them the right to vote in local elections passed the lower House but failed to find favor in the House of Peers.

There are no primaries or party conventions for the nomination of candidates in Japan. Any eligible person may announce his own candidature for the Japanese House of Representatives by filing a notice and depositing a designated sum in cash or government bonds as a guarantee that his hopes of election have some real basis. The amount required is 2 000 yen or about \$700 at present rates of exchange. The deposit is forfeited if the candidate fails to receive at least one tenth of the polled votes which might have been cast for him. This of course is an arrangement which closely parallels the British system of candidacy for election to the House of Commons.<sup>1</sup>

As a matter of practice however each political party in Japan puts forward its regular candidates selected by the party leaders and provides the deposit whenever the candidate is not able or willing to do it for himself. Independent candidates have little chance of being elected. Those who obtain the highest pluralities are elected; a clear majority is never required. There is no regular system of proportional representation although the practice of electing three or more representatives from each constituency gives the minority parties a chance. This is because the voter must designate his choice for a single candidate only —when there are three, four or five to be elected. Those who are elected hold office for a four year term unless the House is sooner dissolved which sometimes happens. While the election is by secret ballot no printed ballots are provided. At the polling booth the voter is given a blank sheet of paper upon which he writes the name of a single candidate. He may write it in Japanese, Chinese or Korean characters or in letters of the Roman alphabet such as we use in English. The supervision of the polls as in France is entrusted to the mayors and other executive officers of local government not to specially appointed polling officials as in America.

Japanese campaign methods are much more restrained than are those now in vogue in English speaking countries. Campaign expenses are rigidly limited by law and all legitimate expenditures must

<sup>1</sup> See *b* or *p* 175

be made through regularly appointed campaign managers. There is however a general belief that in recent election campaigns the rival political parties have spent more money than the law allows. In addition to the limitation upon legitimate expenditures the Japanese election laws forbid the use of the radio for campaign speeches the canvassing of voters either in person or by telephone or the holding of parades and street rallies. Even the campaign posters are restricted to a certain size. But speechmaking by the candidate and his friends is freely permitted and campaign literature may be sent to voters through the mails on payment of the regular postage. Great quantities of it are distributed during the days preceding the election.

CAMPAIGN  
METHODS.

It is an axiom of Japanese politics that the party in power always wins the election. This proposition as a matter of fact does not always prove true nevertheless the government manages the entire election machinery and this gives it a great advantage. The local government system of Japan as will be explained later is such that the cabinet can exercise complete control over it—and the local officers conduct the elections. The minister for home affairs who in this way serves as head of the entire electoral system is sometimes generalissimo or chief strategist for the government party as well. The incentive to unfairness which is involved in this relationship must be tolerably self-evident. Yet Americans should not be amazed at it, for they have seen in recent years the national government chief dispenser of patronage serving also as the national chairman of the party in power.

GOVERNMENT  
CONTROL OF  
ELECTIONS.

Procedure in the Japanese House of Representatives is much like that of the British House of Commons. There is a speaker or presiding officer chosen by the House and he strives to keep aloof from all party entanglements. There are standing legislative committees the members of which are selected by party caucuses as in the United States and subsequently ratified by the House. As the standing committees are few (only four or five in number) the practice of appointing special committees has become common. Each committee elects its own chairman. The Anglo-American device of sitting as a Committee of the Whole is also quite freely used. Bills may be introduced by the government or by a private member but in the latter case at least twenty members must join in sponsoring the measure. All government bills are referred to

LEGISLATIVE  
PROCEDURE.

a committee but the committee hearings are not public. No testimony is taken by the committees which merely discuss the measure with members of the government or members of the House. Bills introduced by private members go sometimes to a standing committee and sometimes directly to the Committee of the Whole. The Japanese have adopted the Anglo American rule that every bill must be given three readings but the first and third readings are for the most part perfunctory. The closure can be used as at Westminster to shorten debate and prevent obstruction. Votes are taken by asking the members to rise and be counted. In case of doubt the members file past a box and drop white or black balls into it—the former indicating *Yea* and the latter *Nay*. In fact the Japanese have copied their procedure from the Mother of Parliaments with scrupulous fidelity.

But there is one important feature in which they have not followed the usages of the British House of Commons. In that body no proposal to spend money can be considered unless it is first approved by a member of the cabinet.<sup>1</sup> But any thirty members can propose an appropriation in the Japanese lower House although its chances of adoption are not large if the ministers are opposed. Certain categories of items in the Japanese budget moreover cannot be either raised or lowered by parliament unless the cabinet agrees. Among these are the imperial civil list and house expenditures the salaries of officials which have been established by law and such expenditures as relate to the legal obligations of the government. Rather curiously the budget in Japan does not have the status of a law as in most other countries. It is merely a parliamentary approval of the government's authorization to spend. And if the Japanese parliament fails to pass a budget the government may go ahead and expend the amounts which were provided in the budget of the preceding year.<sup>2</sup>

All important measures in Japan as in Great Britain are introduced by the government. The government may be asked at any time and on any subject but the replies to such questions are not followed by votes of confidence as under the interpellation procedure in the French Chamber of Deputies. Bills introduced

See p. 252

As a matter of fact it has decided ways of spending larger sums than were provided in the budget of the preceding year. For an explanation of this see H. S. Inglis, *The Japanese Government and Politics* (New York 1932) pp. 191-192.

by private members no matter what they relate to have about one chance in ten of materializing into law as the statistics show. In the case of government bills this ratio is almost exactly reversed. Before it can become law a bill must be enacted in identically similar form by both houses and if neither is willing to recede from its amendments a committee of conference attempts to reconcile the disagreement.

GOVERN-  
MENT MEAS-  
URES AND  
PRIVATE  
MEMBERS'  
BILLS.

Japanese laws are passed in general terms leaving the details to be supplied by imperial ordinances which are framed by the ministry. When parliament is not in session the ministry may cause ordinances to be issued on urgent matters even outside the provisions of the law. But such ordinances cease to have validity unless they are ratified by both houses of parliament at their next session. A great deal of legislation in Japan is by ordinance regular or emergency.

ORDI-  
NANCES.

#### JAPANESE POLITICAL PARTIES

The experience of Japan supports the dictum of Lord Bryce that political parties are inevitable and that no system of truly representative government can be carried on without them. The establishment of parliamentary government in Japan

EARLIER  
HISTORY

as quickly followed by the emergence of nearly a dozen political parties. These presently coalesced into four or five of which the Liberals and Progressives were the most influential. During these years the members of the cabinet tried to hold themselves aloof from party affiliations. It was their belief that while parties might have their place in parliament they should not be permitted to influence the executive branch of the government because the latter was supposed to act in the interests of the whole people impartially. Ministerial independence not ministerial responsibility was given the emphasis. But in the course of time the prime ministers found it essential to recognize the party organizations in making up their cabinets for otherwise their relations with parliament were likely to be troublesome. This recognition was rather spasmodic however because no single party was strong enough to control a majority in the House of Representatives. Or if one of the parties secured a majority at the elections it usually developed internal dissensions when its leaders were placed in ministerial office.

The history of Japanese politics during the past forty years there

fore is the chronicle of a long-continued struggle, not yet ended between two divergent philosophies of parliamentary government. On the one hand there are those who argue that since the emperor is aloof from all party affiliations his advisers should be in a like situation. In other words they contend that the ministers should not be chosen from among the leaders of the dominant party as in Great Britain, but should be selected without reference to party which means that they should be chosen for the most part, from outside the membership of parliament altogether. On the other hand the party leaders have consistently maintained that the will of the people at the polls cannot be carried into effect unless their action is regarded as a mandate in the formation of a ministry. From time to time it has seemed as if the principle of partisan responsibility was obtaining a secure foothold in Japan but the national tradition is against it and the issue is not yet settled.

Meanwhile two strong party organizations have evolved from the kaleidoscopic shiftings of the past four decades. There are minor groups as well but they are not at present of much political consequence. The two strong parties are known as the *Seiyukai* and the *Minseitō*. Not by literal translation but by their general programs they may be designated as the Imperial and Democratic parties respectively — although both profess their adherence to democratic principles. The *Seiyukai* is the party of Japanese expansion. Its strength at the polls is derived from various sources, but it is especially strong among the larger landowners. It has supported the government's expansionist enterprises in Manchukuo and Northern China. Measures for the development of foreign trade by the underselling of Japan's competitors, have also had this party's support. With respect to internal affairs the *Seiyukai* is more conservative than its chief rival. Its party funds have been supplied to a considerable extent, by the giant Japanese financial and business association known as the *Mitsui*.

As for the *Minseitō* it is the party of curtailed expansion, balanced budgets, the maintenance of the gold standard, financial retrenchment, national economic planning and political reform. Its program includes a demand for woman suffrage and for proportional representation. The strength of this party likewise comes from a variety of sources but it is

TWO OF THE  
URGENT PHILOSOPHIES  
OF PARTY  
GOVERNMENT

PRESENT  
DAY  
PARTIES

1. THE  
SEIYUKAI

2. THE  
MINSEITŌ



especially strong among the lesser industrialists of Japan. For financial support its affiliation is with the other great aggregation of banking and business interests known as the Mitsubishi. Thus we have a phenomenon which is not uncommon in the politics of western countries, namely that of great financial and business interests battling each other behind a smoke screen of political parties.

In addition to this pair of outstanding bourgeois party organizations there have been several proletarian party groups in Japan. There is a Labor party with a program which includes trade union recognition and collective bargaining but it has not been politically active during the past few years. There is also a Socialist Popular party. Some years ago there was a Communist party in Japan but it has been virtually extinguished by rigorous governmental persecution. This does not mean that there are no longer any groups of communist leaning in Japan; there is reason to believe that there are many such especially among the younger voters but they are not articulate just now. At recent elections the *Minseitō* and the various proletarian groups have shown increased strength at the polls.<sup>3</sup> This has greatly disturbed the strongly nationalist elements in Japan to which the proletarian groups are opposed and has led the former to conduct a campaign of denunciation against political parties in general. They have been branded as a corrupting importation from the effete political systems of the Western World. This may be a prelude to the attempted shifting of the government to a fascist or semi-fascist basis.

3 THE  
PROLETARIAN  
GROUPS

The Japanese army can hardly be called a political party but to a considerable extent it functions as one —making its influence felt in the determination of all governmental policies. Members of the supreme command are political as well as military tacticians and the army maintains a loyalty to its higher officers which goes beyond the requirements of military discipline. The Japanese army comes from the people; its junior officers and the men in its ranks are drawn from the sons of shopkeepers, artisans and small farmers. They reflect the opinions of the social environment from which they come. There are reasons for believing that there is a strong proletarian sentiment in the Japanese army, an undercurrent of feeling adverse to the big finan-

THE ARMY  
AS A  
POLITICAL  
ACTOR

At the election of 1936 the *Minseitō* gained 205 seats, the *Seiyūkai* 175 and the Socialist Popular party 15 seats. The House of Representatives

cial interests and an impatience with the seemingly futile manoeuvrings of the regular parliamentary groups. When a portion of the Tokyo garrison under the leadership of its younger officers murdered a few years ago and killed several members of the government the incident gave the civilian political leaders something to think about. What the army wants is a very important factor in Japanese politics. The dangers involved in such a situation do not have to be dilated upon. Americans have often seen them exemplified in the republics south of their own borders. For nowhere else has military dictatorship in politics found more fertile soil than in the long stretch from the Rio Grande to Cape Horn.

The organization of the major Japanese political parties is fashioned generally upon the English model. There is an annual conference or convention of party delegates. This body prepares or revises the party's program and elects its president or leader. As a matter of practice these functions are performed in advance of the meeting by a few seasoned elder politicians in the party and the conference merely ratifies their actions. Between conferences the affairs of the party are managed from national party headquarters which each maintains for itself in Tokyo—with a staff of paid officers. Party organization is carried down into the prefectures with an annual party convention or conference in each of these divisions and a president or leader for the party in each of them. Within the prefectures there are local organizations for all the cities as well as for most of the towns and villages. Each organization raises and spends its own funds, the national headquarters contributing little or nothing to the local units of the party.

### THE JUDICIAL SYSTEM

The legal system of Japan has been heavily influenced by the Napoleonic and German codes. It is replete with features somewhat hastily drawn from the jurisprudence of the European compilations. After the establishment of the new régime in 1868 a beginning was made towards the re-modelling of the legal system but the work was not completed until 1908 when several codes were promulgated—codes of constitutional law, criminal law, commercial law and codes of civil and criminal procedure. All were cast in the mould of Continental European jurisprudence which traces its descent from the *Corpus Juris* of imperial

PARTY  
ORGANIZA  
TION

JAPANESE  
JURISPRU  
DENCE

Rome Relatively few features of indigenous Japanese law now survive <sup>1</sup>

According to the Japanese constitution the judicial power belongs to the emperor but must be exercised by him through independent courts of law These regular law courts as they have

THE  
REGULAR  
COURTS.

been established are of four gradations First there are local courts which deal with minor offenses and with civil controversies where the amount at issue is small Each local court has a single judge Above these are district courts with more extended jurisdiction Seven courts of appeal from these district courts are located in various parts of the country and finally there is a court of cassation or supreme court which sits at Tokyo in nine sections of five judges each Provision for trial by jury is made in the district courts only and even there the jury system is not widely used

The judges of all the Japanese courts are appointed for life but must retire when they reach an age limit which is fixed by law Appointments are made on the recommendation of the

JUDICIAL  
PROCEDURE

minister of justice Prosecuting attorneys or procurators are attached to each of the higher courts they are also appointive and have life tenure The procedure in criminal cases is quite different from that to which we have grown accustomed in the United States There is no grand jury A complaint is filed and the procurator then decides whether to hold the accused for trial Or if the offense is a serious one a preliminary hearing is held by one of the judges of the district court These hearings are not public and the accused is not permitted to be accompanied by counsel Nor is there any writ of habeas corpus to get him out of custody when the hearings are prolonged If the accused is held for trial as the result of the preliminary hearing the trial is ordinarily public but it can be held behind closed doors if the presiding judge so determines The procedure is much like that followed in France the procurator makes an opening statement, the accused is then examined and the various witnesses follow The presiding judge asks the questions and the counsel for the accused must do his cross-examining through the judge—which means that he does very little of it Witnesses are allowed the utmost latitude in testifying for there are very few rules of evidence

The trial jury in Japan is made up of twelve male citizens selected

<sup>1</sup> For full account see the article on 'Japanese Law' in the *Encyclopedia of the Social Sciences* Vol. IX, pp. 24-27

from a panel with both sides allowed the privilege of challenging. But the jury is not selected in open court. The presiding judge, the procurator and the counsel for the accused do the selecting before the trial begins. And the verdict is determined by a majority: there is no requirement that the jurors shall be unanimous. Nor are the judges bound to follow the jury's verdict, although they usually do unless the vote is a tie. They may order a new jury chosen, and the trial held over again, if they are dissatisfied with the verdict. The accused may waive his right to a jury trial except in the most serious cases and most defendants do so preferring to be tried by the judges alone. It should be remembered however that the jury system has been operating in Japan for a very short time—only since 1928—and the people have not yet become used to it.

As in the countries of Continental Europe a distinction is made in Japan between ordinary and administrative law between ordinary and administrative courts. But Japan has one administrative court only. Jurisdiction, in cases involving administrative law is exercised by this court of administrative litigation, as it is called. Its judges are appointed for life on recommendation of the prime minister. The competence of the court extends to all matters in which the chief issue is the validity of some administrative act. More particularly it deals with controversies between individuals and the governmental authorities concerning taxes, licenses, abuses of power on the part of public officers, boundaries between public and private lands, and so forth. It does not have anything to do with criminal accusations against public officials: these are tried in the ordinary courts.

When a dispute arises in Japan as to whether a case should be tried in the administrative court or in the ordinary courts—who settles it?

In France, it will be recalled, there is a special court of conflicts codified with this power. Some years ago it was provided that there should be set up in Japan a

court of competence dispute to deal with such questions, but this court has not yet been established. In the meantime the privy council is supposed to take the responsibility for settling jurisdictional disputes between the court of cassation and the court of administrative litigation, but it has established no regular procedure for doing so. Fortunately there has been little or no occasion for calling upon its services.

## LOCAL GOVERNMENT

For purposes of local government Japan is divided into forty six prefectures and the territory of Hokkaido. Each has a prefect (or local governor) as in France. This official is appointed on recommendation of the minister for home affairs (who is entrusted with the supervision of local government in Japan) and a prefect's appointment is political in that he usually goes out of office when a new minister comes in. The Japanese prefect like the French occupies a dual position. On the one hand and primarily he is the administrative and political agent of the central authorities. As such he carries out the minister's instructions and incidentally tries to promote the political strength of the party in power. The prefectures are the main centers through which the powers of the imperial government are radiated. Being in charge of the police and responsible for the enforcement of the laws the prefects are the agents upon whom the imperial government depends for the maintenance of order. But the prefect is also the executive head of his own little province. In this work he is assisted by three or more chief administrative assistants who are appointed by the minister for home affairs and by a large subordinate staff the members of which are chosen by the prefect under civil service regulations.

PREFECTS  
AND RE  
FECTURE

In each prefecture there is a legislative body made up of two branches. More accurately it is a single body which delegates part of its functions to a smaller group chosen from within its own ranks. The larger body is known as the prefectural assembly the smaller one as the council of the prefecture. Members of the assembly are elected by the people on a manhood suffrage basis. The assembly meets once a year for a session which lasts almost four weeks. All important matters relating to the local budget taxation public works and so forth must be submitted to it by the prefect but he is not obliged to follow its advice. If the prefect with the approval of the home minister makes up his mind to disregard a vote of the assembly there is nothing to prevent his doing so. On the other hand there is much to be gained by working in harmony with this representative body and the prefect is usually shrewd enough to realize that fact. The assembly selects from within its own membership a small council (usually of ten members) to serve during the interval

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COUNCIL

between its own annual sessions. The prefect is *ex officio* chairman of this body and while he submits many matters to it for approval he is not bound to abide by its decisions. In brief the government of a Japanese prefecture is very much like that of a French department but with two differences: (1) the central authorities in Japan have a larger measure of control and (2) the elected representatives of the people have less power in relation to the prefect.

Within the Japanese prefectures there are cities, towns, and villages. All have substantially the same general framework of local government and the same general powers, although the larger cities have some additional privileges. Tokyo, the capital, is under a somewhat special regime. Each municipality has a mayor who is not elected by popular vote but is chosen by the municipal assembly. One or more adjoints or deputy mayors are similarly selected to assist him in his work. The assembly does not usually make these selections from within its own ranks but chooses men who have had administrative experience. The mayor or his deputies appoint the subordinate officers of municipal administration and there are no civil service restrictions upon their freedom of choice. Consequently the spoils system is about as deeply lodged in Japanese cities as in American. Like the prefect, who is his immediate superior, the mayor acts in a dual capacity. He is the municipal agent of the imperial authorities; he is also the executive head of his own municipality and as such must work in harmony with the assembly.

Members of the municipal assembly are elected by manhood suffrage for four year terms. This assembly is the legislative organ of the municipality and its approval is required for the validity of the municipal budget as well as in all matters relating to local taxation, borrowing, public works, public health, poor relief, and public utilities. Within this field the mayor cannot act alone; he must have the assembly's approval. The latter is therefore a good deal more than an advisory body. But the assembly has nothing to do with local police administration, fire protection, or franchises to public utility concerns. These functions are reserved to the higher authorities. The latter moreover may veto any action taken by the mayor and the assembly within their own field of jurisdiction. They may, as in France, dismiss a mayor and dissolve a municipal assembly. To serve while it is not in session the assembly selects from its own membership a committee or council.

MUNICIPAL  
GOVERN-  
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THE MAYOR.

THE  
MUNICIPAL  
ASSEMBLY

which the mayor calls together at frequent intervals in executive session. In the smaller municipalities no council is set up and in the smaller villages the assembly is sometimes replaced by a general meeting of all the villagers.

All in all what has been said about local government in France can be reiterated with reference to Japan. Centralization is its essence; centralization raised to the *n<sup>th</sup>* power. All authority converges inward and upward; the whole system can be charted in the form of a perfect pyramid. The result in both countries tends toward apoplexy at the center and paralysis at the extremities. A shrewd and far-seeing French student of democracy, Alexis de Tocqueville, once remarked that local institutions constitute the strength of free nations and concludes that even though a nation may have the forms of free government in its national framework it cannot have the spirit of liberty unless its municipal institutions are reasonably free from centralized control. There has been a movement in Japan for elective prefects as a first step towards popular responsibility in local government but it has not made much headway.

A HIGHLY  
CENTRAL-  
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SYSTEM

#### THE OVERSEAS EMPIRE

The overseas empire of Japan includes Formosa, Korea, and the southern half of Saghalien. In addition there is a leased territory on the mainland (Kwantung) and Manchukuo is virtually a Japanese protectorate. Japan moreover holds the mandate for various islands which belonged to pre-war Germany. Formosa has an appointive governor general with various directors of administrative bureaus and services. All are Japanese. There is a council made of officials and laymen, some of whom are Formosans but it has merely consultative functions. Korea has a similar government but more elaborate in its arrangement of departments, bureaus and other administrative services. There is a large advisory council made up chiefly of Koreans who are appointed on nomination of the go-*ern*o general. The latter by the way is always a Japanese army or naval officer of high rank. He is virtually supreme in all matters of Korean administration subject only to instructions from Tokyo. This responsibility is to the Japanese prime minister rather than to the minister for overseas affairs.

GOVERN-  
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ORGANIS-

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Japanese Saghalien is virtually administered as a prefecture but its prefect or governor has wider powers than those given to his colleagues in Japan proper. While the province of Kwantung technically belongs to China it is leased to Japan and the Japanese administer it. The Japanese ambassador to Manchukuo is governor of Kwantung and commander of the Kwantung army. As for Manchukuo it has its own emperor and government is carried on in his name but all his chief advisers are Japanese. The mandated islands are governed through the director and staff of a bureau which is located on one of them, with branches on some of the others.

Japan has been pouring money into all her overseas possessions. Her policy has been to develop the economic resources of these territories before granting them any measure of self government. It is believed by Japanese statesmen of all political parties that in none of the overseas dependencies is the time nearly ripe for home rule. Nor is it likely to be until economic prosperity has been established, education developed and suspicions of sinister Japanese purposes allayed. Japanese rule of course is not popular in her dependencies but this is no matter for surprise. Great Britain in India and the United States in the Philippines have encountered the same antipathy despite all that they have done for economic and social uplift there. The Japanese government appears to cherish the hope that by maintaining law and order, improving the methods of agriculture, developing industries and fostering trade they will induce the Chinese, Koreans and other subject peoples to look with a kindly eye on foreign overlordship. But if that hope is ever fulfilled it will mark a new era in the history of colonial expansion.

Meanwhile the attempt of Japan to bring China to terms by armed pressure may have repercussions on Japanese government the nature of which cannot be predicted. The cost of this enterprise will be a heavy strain upon an already overburdened national budget. It will necessitate heavy borrowings most of which must come from the Japanese themselves and a severe increase in the tax levies. Success in the venture would mean a strengthening of the military influence in Japanese government and might well lead to a further impairment of the parliamentary system. The likelihood of a fascist government in Japan is greater today than it ever was and it can only be avoided if at all by the greatest of good fortune.

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The most informing book in English on the government of Japan is Harold S. Quigley *Japanese Government and Politics* (New York 1933) a volume to which the foregoing chapter is considerably indebted. There are good bibliographies at the close of each chapter in Professor Quigley's book. W. W. McLaren *Political History of Japan during the Meiji Era* (New York 1916) gives an excellent survey of developments down to its date of publication and his *Japanese Government and Documents* published by the Asiatic Society of Japan in 1914 will also be found useful. A readable outline of the Japanese governmental system is given in N. Kitazawa *The Government of Japan* (Princeton 1929). A book on *Government in Japan* by A. E. Hindmarsh is announced for early publication. No attempt to plough beneath the surface of Japanese constitutional philosophy should be made without consultation of the authoritative *Comments on the Constitution of the Empire of Japan* by Hirobumi Ito. A second edition of this volume published at Tokyo in 1906. See also K. Hamada *Principles* (London 1937).

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